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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. 190.

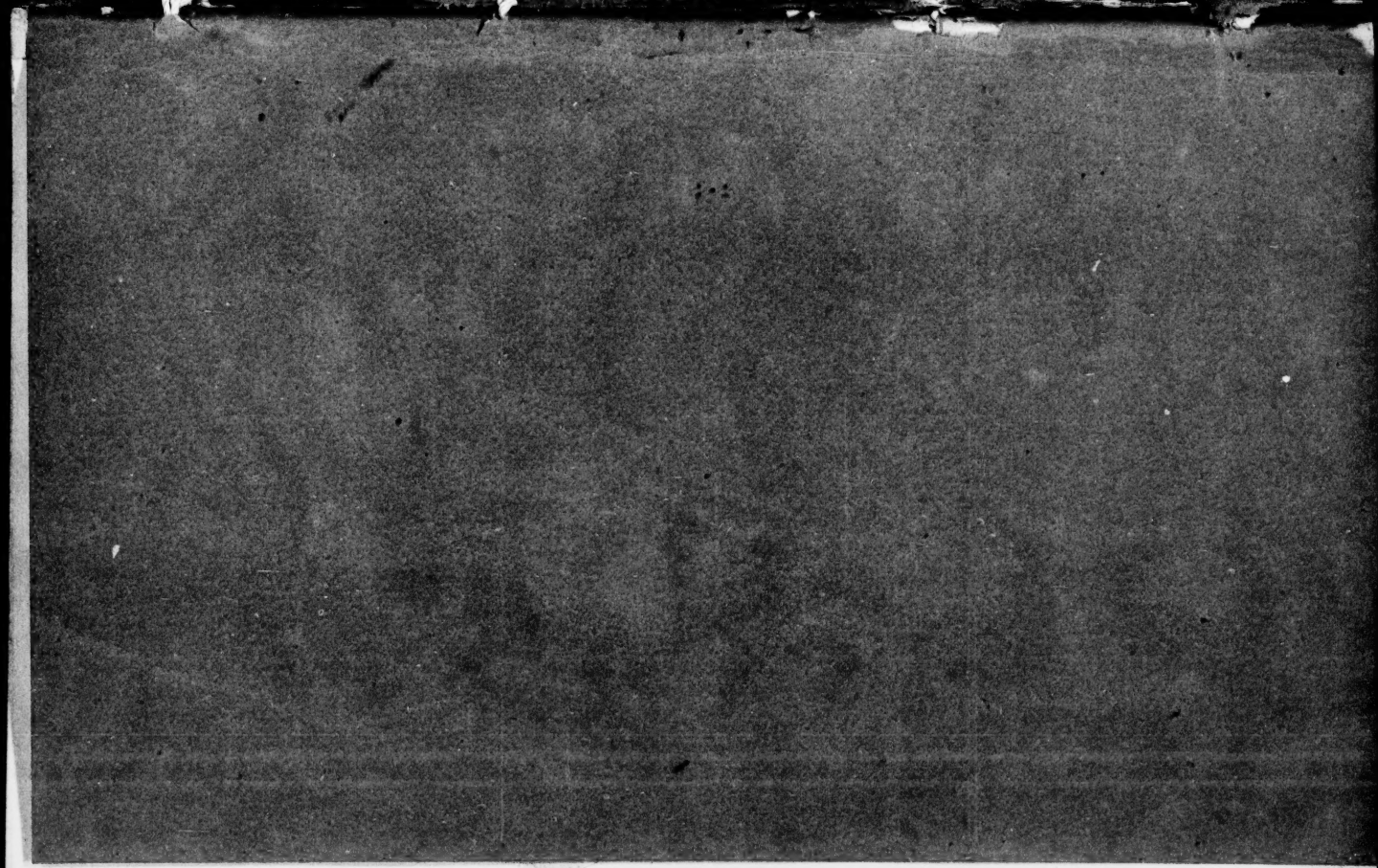
THE TOWN OF SCIPIO, PLAINTIFF IN ERROR

vs.

WILLIAM P. WRIGHT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

FILED SEPTEMBER 27, 1877.



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1 United States circuit court, northern district of New York. Of the term of June, to wit, the 5th day of September, 1874, as yet of the term of June, 1874.

WILLIAM P. WRIGHT
vs.
THE 'N OF SCIPIO.

NORTHERN DISTRICT OF NEW YORK, *ss:*

William P. Wright, plaintiff in this action, by David Wright, his attorney, brings this his action against the town of Scipio, defendant, and by this his complaint says and shows to the court here:

That he, the said plaintiff, is not a citizen or resident of the State of New York, but that he is a citizen of the State of Florida, and a resident of the county of Putnam, in said State of Florida.

That the defendant, the said town of Scipio, is one of the towns of the county of Cayuga in said State of New York, and within the northern district of New York.

That said defendant is a municipal corporation for certain purposes, and amongst others of suing and being sued upon contracts.

And, for a first count or cause of action, the said plaintiff says and avers:

2 That heretofore, to wit, on the 16th day of April, 1862, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of said town in said county, who were appointed by said act as commissioners to act in conjunction with said supervisors in effecting and executing the purposes of said act, to borrow on the faith and credit of said town such sum of money as they, said supervisors and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor under their official signatures a bond or bonds on which the interest should be made payable annually or semi-annually, during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed
3 in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors appointed to act as commissioners by section first of said act should hold their office till the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized

by said act until a railroad company had been duly organized, according to the requirements of the general railroad law, for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons
4 taxed in said town, as appearing on the assessment-roll of such town, made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement to the effect that the persons whose written assents are thereto attached and filed, as aforesaid, comprise two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for constructing, maintaining, and operating a railroad for public use, in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County, and passing through said town of Scipio.

5 That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared on the assessment-roll of said town made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assent and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Scipio on its assessment-roll next previous thereto, before the execution and delivery of any bonds by said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, William Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said town, theretofore duly elected by the electors of said town according to said act, and by virtue thereof, under their several official signatures, duly executed a certain bond of said town, bearing date the said 20th day of May, 1853, and numbered one in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pur-
6 suance of said act of the legislature of the State of New York, acknowledged itself to owe and promised to pay to the bearer of said bond No. 1 the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually, on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place, at the expiration of twenty years from the first day of January, 1853.

That the said William Taber, Calvin Tracy, and George Slocum, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by

them as aforesaid, duly executed and attached to the said bond No. 1 a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable by the terms of said bond on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each installment of semi annual interest, which would thereafter become due and payable by the terms and condition of said bond, to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

7 That afterwards, and before said bond No. 1 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 1 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Scipio, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bonds and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed on the faith and credit of said town of Scipio, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions and in virtue

8 of said act of said legislature, and to secure the payment thereof, with interest thereon at the rate of seven per cent. per annum, from the time of such borrowing, delivered the said bond No. 1, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof. That the interest upon said bond was duly paid by said town to the holder of said bond up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were upon the payment thereof detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putnam, in said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became, and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 1, together with the said coupons thereto attached, for the several semi-annual instalments of interest which became due and payable thereon by the terms thereof, after that which was so as aforesaid paid by said town, all of which then and yet

9 remain unpaid. And the said bond No. 1, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained, and still remains in his possession, as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is, entitled to demand, have, and receive the moneys due and remaining unpaid thereon, and upon said several coupons, and also the monies thereafter to become due and payable thereon, when and as the same should there-

after become due and payable, according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not, at the times when the moneys mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any time since, had at the said The Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due could be or would have been paid, had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond, and of said several coupons, nor at any time since, and although often requested so to do, the said town of Scipio has hitherto wholly refused and still does refuse to pay the said several sums in said coupons and said bond specified, being the principal and interest which accrued upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid, and said defendant, although often requested so to do, has hitherto wholly refused and still does refuse to pay the said several sums or any or either of them, or any part thereof or of any or either of them.

And for a second count or cause of action, the said plaintiff says and avers:

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of said town, such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor under their official signatures a bond or bonds on which the interest should be made payable annually, or semi-annually, during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors appointed to act as commissioners by section first of said act should hold their office till the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should

at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized according to the requirements of the general railroad law, for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn and connecting Lake Ontario with the Susquehannah and Cayuga Railroad or the New York and Erie Railroad, and until the written assent of two-thirds of
13 the resident persons taxed in said town, as appearing on the assessment roll of such town, made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town in its assessment roll next previous thereto.

That a railroad company, to wit, The Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for constructing, maintaining, and operating a railroad for public use in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County, and passing through the said town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared in the assessment-roll of said
14 town made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act and filed in the clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statements, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Scipio, on its assessment-roll next previous thereto, before the execution and delivery of any bonds by said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, William Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said town, theretofore duly elected by the electors of said town according to said act, and by virtue thereof, under their several official signatures, duly executed a certain bond of said town, bearing date the said 20th day of May, 1853, and numbered two in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay to the bearer of said bond No. 2 the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January
15 and July in each year on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of

New York, the principal to be reimbursed at the same place at the expiration of twenty years from the first day of January, 1853.

That the said William Taber, Calvin Tracy, and George Slocum, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them as aforesaid, duly executed and attached to the said bond No. 2 a coupon for the sum of thirty-five dollars, being the semi annual interest which would become due and payable by the terms of said bond on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each installment of semi-annual interest which would thereafter become due and payable by the terms and conditions of said bond, to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards and before said bond No. 2 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 2 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he,
the said clerk, under his said official signature, certified that a
16 paper purporting to be the written assent of two-thirds of the
resident tax-payers of said town of Scipio, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed on the faith and credit of said town of Scipio, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars for the purpose and in accordance with *with* the provisions and in virtue of said act of said legislature, and to secure the payment thereof, with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 2, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed to him, the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof. That the
17 interest upon said bond was duly paid by said town to the holder
of said bond up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were upon the payments thereof detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putnam, in said State of Florida, he, the said plaintiff, for a valuation consideration then paid by him therefor, purchased and became and has ever since continued to be and now is the owner, holder, and bearer of said bond No. 2, together with the said coupons thereto attached for the several semi-annual instalments of interest which became due and payable thereon by the terms thereof, after that which was so as aforesaid paid by said town, all of which then and yet remain unpaid. And the said bond No. 2, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained and still remains in his possession as such owner, holder, and bearer thereof; and he, the said

plaintiff, thereby became and was and still is entitled to demand, have, and receive the monies due and remaining unpaid thereon, and upon said several coupons, and also the monies thereafter to become
18 due and payable thereon, when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not, at the times when the moneys mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any time since, had at the said The Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due could be or would have been paid, had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond, and of said several coupons, nor at any time since, and although often requested so to do, the said town of Scipio has hitherto wholly refused, and still does refuse, to pay the said several sums on said coupons and said bond specified, being the principal and interest which have accrued upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified. And said plaintiff further avers that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums
19 so as aforesaid mentioned in said several coupons from the time the same severally became due and payable, still remain due and unpaid, and the said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the said several sums or any or either of them, or any part thereof or any or either of them.

20 And for a third count or cause of action, the said plaintiff says and avers:

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to author' any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga and the assessors of such town, in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit of said town such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds on which interest should be made payable annually or semi-annually during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and
21 place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors, appointed to act as commissioners by section first of said act, should hold their office until the next annual town meeting of their town,

when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisors in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should be at all times sufficient for carrying into effect the provi-ions of said act.

It was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had beed duly organized according to the requirements of the general railroad law for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn and connecting Lake Ontario with the Susquehannah and Cayuga Railroad or the New York and Erie Railroad, and until the written assent of two thirds of the resident persons taxed in said
22 town, as appearing on the assessment roll of such town made next previous to the time such money may be borrowed, shall have been obtained by such superviser and commissioners, or some one or more of them, and filed in the clerk's officeof Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, The Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for constructing, maintaining, and operating a railroad for public use in the conveyance of persons and property, commencing at some point in the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County, and passing through said town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared on the assessment-roll of said town, made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act, and filed in
23 clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Scipio, on its assessment-roll next previous thereto, before the execution and delivery of any bonds by said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, William Faber, who was then supervisor of said town of Scipio, and Calvin Tracy, and George Slocum, who were then the railroad commissioners of said town, theretofore duly elected by the electors of said town, according to said act and by virtue thereof, under their several official signatures, duly executed a certain bond of said town, bearing date the said 20th day of May, 1853, and numbered three in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe and promised to pay to the bearer of said bond No.

3 the sum of one thousand dollars with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place at the expiration of twenty years from the first day of January, 1853.

That the said William Faber, Calvin Tracy, and George Slo-
24 cum, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them as aforesaid, duly executed and attached to the said bond No. 3 a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable by the terms of said bond on the first day of July, 1854, and a like coupon for the sum of thirty five dollars for each installment of semi-annual interest, which would thereafter become due and payable by the terms and conditions of said bond, to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond No. 3 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon such bond No. 3 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Scipio, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bonds and coupons.
25 as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed on the faith and credit of said town of Scipio of some person whose name is unknown to this plaintiff the sum of one thousand dollars for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 3, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof. That the interest upon said bond was duly paid by said town to the holder of said bond up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were upon the payment thereof detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putnam, in the said State of Florida, he, the said plaint-
26 iff, for a valuable consideration then paid by him therefor, purchased and became, and has ever since continued to be and now is, the owner, holder, and bearer of said bond No. 3, together with the said coupons thereto attached for the several semi-annual instalments of interest which became due and payable thereon by the terms thereof,

after that which was so as aforesaid paid by said town, all of which then and yet remain unpaid. And the said bond No. 3 with the said coupons attached was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained and still remains in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is, entitled to demand, have, and receive the monies due and remaining unpaid thereon, and upon said several coupons, and also the monies thereafter to become due and payable thereon, when and as the same should thereafter become due and payable, according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not, at the times when the moneys mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any time since, had at the Bank of the State of New York, in the city of New York or elsewhere, any money or means, whereby the said several sums acknowledged by said town of Scipio to be due could be or
27 would have been paid, had a demand thereof been made when the same became due and payable as provided in and by the terms of said bond, and of said several coupons, nor at any time since, and although often requested so to do, the said town of Scipio has hitherto wholly refused and still does refuse to pay the said several sums in said coupons and said bond specified, being the principal and interest which accrued upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of the principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid, and the said defendant, although often requested so to so, has hitherto wholly refused, and still does refuse, to pay the said several sums or any or either of them, or any part thereof or of any or either of them.

28 And, for a 4th count or cause of action, the said plaintiff says and avers·

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," whereby it was amongst other things enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit of said town such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds on which the interest should be made payable annually or semi-annually, during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors appointed to act as commissioners by section first of said act should hold their office till the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provision of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized according to the requirements of the general railroad law for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment roll of such town, made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax payers of said town on its assessment roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for constructing, maintaining, and operating a railroad for public use in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County, and passing through the town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared on the assessment roll of said town made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Scipio on its assessment roll next previons thereto before the execution and delivery of any bonds by said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, William Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said town theretofore duly elected by the electors of said town according to said act, and by virtue thereof, under their several official signatures, duly executed a certain bond of said town, bearing date the said 20th day of May, 1853, and numbered four in the series of bonds executed under

and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay to the bearer of said bond No. 4, the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place, at the expiration of twenty years from the first day of January, 1853.

That the said William Taber, Calvin Tracy, and George Slocum, as such supervisor and railroad commissioners as aforesaid, and
32 under their official signatures, at the same time of the execution of said bond by them as aforesaid, duly executed and attached to the said bond No. 4 a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable by the terms of said bond, on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each installment of semi-annual interest which would thereafter become due and payable by the terms and condition of said bond, to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond No. 4 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 4 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Scipio, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bond and
33 coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed on the faith and credit of said town of Scipio, of some person whose name is unknown to the plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 4, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned, thereon endorsed to him, the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof. That the interest upon said bond was duly paid by said town to the holder of said bond, up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were upon the payment thereof detached from said bond and cancelled.

34 That afterwards, to wit, on the first day of , 1874, at the county of Putnam, in said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became

and has ever since continued to be, and now is, the owner, holder and bearer of said bond No. 4, together with the said coupons thereto attached for the several semi-annual instalments of interest which became due and *and* payable thereon, by the terms thereof, after that which was so as aforesaid paid by said town, all of which then and yet remain unpaid.

And the said bond No. 4 with the said coupons attached was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained, and still remains, in his possession as such owner, holder and bearer thereof, and he, the said plaintiff, thereby became and was, and still is, entitled to demand, have and receive the monies due and remaining unpaid thereon, and upon said several coupons, and also the monies thereafter to become due and payable thereon, when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not, at the times when the moneys mentioned in said bond and in said several
35 coupons became due and payable, nor has said town of Scipio at any time since had at the said The Bank of the State of New York in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due could be or would have been paid had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond, and of said several coupons, nor at any time since, and although often requested so to do, the said town of Scipio has hitherto wholly refused and still does refuse to pay the said several sums in said coupons and said bond specified, being the principal and interest which accrued upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons from the time the same severally became due & payable, still remain due & unpaid, & said def't, altho' often requested so to do, has hitherto wholly refused & still does refuse to pay the said several sums, or any or either of them, or any part thereof, or any or either of them.

36 And for a 5th count or cause of action the said plaintiff says and avers:

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie, or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of *of* said act, to borrow on the faith and credit of said town such money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor under their official signature a bond or bonds on which the in-

terest should be made payable annually or semi-annually during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

37 And wherein and whereby it was further enacted that said assessors appointed to act as commissioners by section first of said act should hold their office till the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected two commissioners to be called railroad commissioners, to act in conjunction with the supervisor in carying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized according to the requirements of the general railroad law, for the purpose of constructing the aforesaid described railroad, to wit: A railroad passing through the city of Auburn and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment roll of such town, made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County together

38 with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for constructing, maintaining, and operating a railroad for public use, in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County, and passing through the town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared on the assessment roll of said town made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statements to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said

39 town of Scipio on its assessment roll next previous thereto, before the execution and delivery of any bonds by said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, William Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and

George Slocum, who were then the railroad commissioners of said town theretofore duly elected by the electors of said town according to said act, and by virtue thereof, under their several official signatures, duly executed a certain bond of said town, bearing date the said 20th day of May, 1853, and numbered five in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay to the bearer of said bond No. 5, the sum of one thousand dollars with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place at the expiration of twenty years from the first day of January, 1853.

That the said William Taber, Calvin Tracy, and George Slocum as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said
40 bond by them as aforesaid, duly executed and attached to the said bond No. 5 a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable by the terms of said bond on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each installment of semi-annual interest which would thereafter become due and payable by the terms and conditions of said bond to and including the semi-annual interest which would become due and payab e thereon on the first day of January, 1873.

That afterwards, and before said bond No. 5 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 5 his certificate in writing duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Scipio, with the affidavits required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had
41 been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed on the faith and credit of said town of Scipio, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 5, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof. That the interest upon said bond was duly paid by said town to the holder of said bond up to and including that which became due and payable on the first day of January, 1858, and

the coupons therefor were upon the payment thereof detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putnam, in said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became, and has ever since continued to be, and now is the owner,
42 holder, and bearer of said bond No. 5, together with the said coupons thereto attached for the several semi-annual instalments of interest which become due and payable thereon by the terms thereof, after that which was so as aforesaid paid by said town, all of which then and yet remain unpaid. And the said bond No. 5, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained and still remains in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is entitled to demand, have, and receive the monies due and remaining unpaid thereon, and upon said several coupons, and also the monies thereafter to become due and payable thereon, when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not at the times when the moneys mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any time since, had, at the said The Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due, could be, or would have been, paid, had a demand thereof been made when the same became due and payable, as provided in and by the terms
43 of said bond and of said several coupons, nor at any time since, and although often requested so to do the said town of Scipio has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, being the principal and interest which accrued upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of *of* the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid, and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the said several sums or any or either of them, or any part thereof, or of any or either of them.

44 And for a 6th count or cause of action, the said plaintiff says and avers:

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," whereby it was amongst other things enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit

of said town such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon not exceeding seven per cent. per annum, and to execute therefor under their official signatures a bond or bonds on which the interest should be made payable annually or semi-annually, during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

45 And wherein and whereby it was further enacted that said assessors, appointed to act as commissioners by section first of said act, should hold their office till the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized, according to the requirements of the general railroad law, for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment roll of such town, made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together

46 with the affidavit of such supervisor or commissioners, or *or* any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for constructing, maintaining, and operating a railroad for public use in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County, and passing through said town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared on the assessment roll of said town made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by such

47 act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed

as aforesaid comprised two-thirds of all the resident tax payers of said town of Scipio on its assessment roll next previous thereto, before the execution and delivery of any bonds by said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, William Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said town theretofore duly elected by the electors of said town, according to said act, and by virtue thereof, under their several official signatures, duly executed a certain bond of said town bearing date the said 20th day of May, 1853, and numbered six in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay to the bearer of said bond No. 6, the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually, on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place at the expiration of twenty years from the first day of January, 1853.

That the said William Taber, Calvin Tracy, and George Slocum,
48 as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them as aforesaid, duly executed and attached to the said bond No. 6 a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable by the terms of said bond on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each installment of semi-annual interest which would thereafter become due and payable by the terms and condition of said bond to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond No. 6 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 6 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident taxpayers of said town of Scipio, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards and after the execution of said bond and coupons as
aforesaid, and after the organization of said railroad company as
49 aforesaid, and after the written assent of two-thirds of the *of the* resident persons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed on the faith and credit of said town of Scipio, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof, with interest thereon, at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 6, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned

thereon endorsed, to him, the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof; that the interest upon said bond was duly paid by said town to the holder of said bond up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were, upon the payment thereof, detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putnam, in said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became, and has ever since continued to be, and now is, the owner,
50 holder, and bearer of said bond No. 6, to*to*gether with the said coupons thereto attached, for the several semi-annual instalments of interest which became due and payable thereon by the terms thereof after that which was so as aforesaid paid by said town, all of which then and yet remain unpaid. And the said bond No. 6, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained, and still remains, in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became, and was, and still is, entitled to demand, have, and receive the monies due and remaining unpaid thereon and upon said several coupons, and also the monies thereafter to become due and payable, when and as the same should thereafter become due & payable, according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not at the times when the moneys mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any time since had at the said The Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due could be or would have been paid had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond and of said several coupons, nor at any time since, and
51 although often requested so to do, the said town of Scipio has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, being the principal and interest which accrued upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons from the time the same severally became due and payable, still remain due and unpaid, and said defendant, altho' often requested so to do, has hitherto wholly refused, and still does refuse, to pay the said several sums, or any or either of them, or any part thereof, or of any or either of them.

52 And for a 7th count or cause of action the said plaintiff says and avers:

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad,"

whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit of said town such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon not exceeding seven per cent. per annum, and to execute therefor under their official signatures a bond or bonds on which the interest should be made payable annually or semi-annually during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and *and* place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

53 And wherein and whereby it was further enacted that *that* said assessors appointed to act as commissioners by section first of said act should hold their office till the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided, that the said supervisor and commissioners should have no power to do any of the acts authorized by said act, until a railroad company had been duly organized, according to the requirements of the general railroad law, for the purpose of constructing the aforesaid described railroad, to wit: A railroad passing thro' the city of Auburn, and connecting Lake Ontario with the Susquehanna and Cayuga Railroad, or the New York and Erie Railroad; and until the written assent of two thirds of the resident persons taxed in said town, as appearing on the assessment roll of such town, made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise

54 two thirds of all the resident tax-payers of said town on its assessment roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for constructing, maintaining and operating a railroad for public use, in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County, and passing through said town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared on the assessment roll of said town made next previous to the time of borrowing the money authorized by

said act, was obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act, attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Scipio on its assessment roll next previous thereto before the execution and delivery of any bonds by said supervisor & commissioners of said town.

55 That afterwards, to wit, on the 20th day of July, 1853, William Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said town, theretofore duly elected by the electors of said town, according to said act, and by virtue thereof, under their several official signatures, duly executed a certain bond of said town, bearing date the said 20th day of May, 1853, and numbered seven in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay to the bearer of said bond No. 7 the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place at the expiration of twenty years from the first day of January, 1853.

That the said William Taber, Calvin Tracy, and George Slocum, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them as aforesaid, duly executed and attached to the said bond No. 7 a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable by the terms of said bond on the first day of July, 1854, and a like coupon for the sum of thirty-

five dollars for each instalment of semi-annual interest which
56 would thereafter become due and payable by the terms and condition of said bond, to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond No. 7 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 7 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his official signature, certified that a paper purporting to be the written assent of two thirds of the resident tax-payers of said town of Scipio, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office. That the said supervisor and railroad commissioners, and acting as such, afterwards and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of July, 1853, at the said town of Scipio, borrowed on the faith and credit of said town of Scipio, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions and in virtue of said

act of said legislature, and to secure the payment thereof, with interest thereon at the rate of seven per cent. per annum from the time
57 of such borrowing, delivered the said bond No. 7, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof. That the interest upon said bond was duly paid by said town to the holder of said bond up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were, upon the payment thereof, detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putnam, in said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became and has ever since continued to be and now is the owner, holder, and bearer of said bond No. 7, together with the said coupons thereto attached for the several semi-annual instalments of interest which became due and payable thereon by the terms thereof after that which was so as aforesaid paid by said town, all of which then and yet remain unpaid. And the said bond No. 7, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained and still remains in his possession, as such owner, holder, and bearer thereof; and he, the said plaintiff, thereby became and was and still is entitled to demand, have, and receive the monies due and remaining unpaid thereon and upon said several coupons, and also the monies thereafter to become
58 due and payable thereon, when *when* and as the same should thereafter become due and payable, according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not, at the times when the moneys mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any times since, had at the said The Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due could be or would have been paid had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond and of said several coupons, nor at any time since, and altho' often requested so to do, the said town of Scipio has hitherto wholly refused and still does refuse to pay the said several sums in said coupons and said bond specified, being the principal and interest which accrued upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the 1st of Jan., 1873, & the sums in said several coupons for semi-annual interest specified, & the interest upon the several sums so as aforesaid mentioned in said several coupons from the time the same severally became due and payable still remain due and unpaid, & said def't, altho' often requested so to do, has hitherto wholly refused & still does refuse to pay the said several sums, or any or either of them, or any part thereof, or of any or either of them.

59 And for an 8th count or cause of action, the said plaintiff says and avers:

That heretofore, to wit, on the 16th day of April, 1852, an act was

duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie, or Cayuga and Susquehannah Railroad," whereby it was amongst other things enacted that it should be lawful for the supervisor of any town

in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of said town, such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as may be agreed upon, not exceeding seven per cent. per annum, and to execute therefor under their official signatures a bond or bonds, on which the interest should be made payable annually or semi-annually during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said as-
60 sessors, appointed to act as commissioners by section first of said act, should hold their office till the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisors and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized, according to the requirements of the general railroad law, for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing thro' the city of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of such town made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them,

attached to such statement, to the effect that the persons whose
61 written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment-roll nex' previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for constructing, maintaining and operating a railroad for public use, in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said

railroad at Little Sodus Bay, in the town of Sterling, Cayuga County, and passing through said town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared on the assessment roll of said town made next previous to the time of borrowing the money authorized by said act was obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the tax-payers of said town
62 of Scipio, on its assessment roll next previous thereto, before the execution and delivery of any bonds by said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of July, 1853, William Taber, who was then supervisor of said town of Scipio, and Calvin Tracey and George Slocum, who were then the railroad commissioners of said town, theretofore duly elected by the electors of said town, according to said act and by virtue thereof, under their several official signatures, duly executed a certain bond of said town, bearing date the said 20th day of July, 1853, and numbered eight in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay to the bearer of said bond, No. 8, the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place at the expiration of twenty years from the first day of January, 1853.

That the said William Taber, Calvin Tracey and George Slocum, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond
63 by them as aforesaid, duly executed and attached to the said bond No. 8 a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable by the terms of said bond on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each instalment of semi-annual interest which would thereafter become due and payable by the terms and condition said bond, to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond No. 8 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond, No. 8, his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two thirds of the resident tax-payers of said town of Scipio, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident per-
64 sons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of

said act, to wit, on the said 20th day of July, 1853, at the said town of Scipio, borrowed on the faith and credit of said town of Scipio, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond, No. 8, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinfore mentioned thereon endorsed, to him, the said lender of said money, who thereby then and there became and was the owner, holder and bearer thereof. That the interest upon said bond was duly paid by said town to the holder of said bond, up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were upon the payment thereof detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putman, in said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became, and has ever since continued to be and now is the owner, holder and bearer of said bond No. 8, together with the said coupons
65 thereto attached, for the several *for the several* semi-annual instalments of interest which became due and payable thereon by the terms thereof, after that which was so as aforesaid paid by said town, all of which then and yet remain unpaid. And the said bond No. 8, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained and still remains in his possession as such owner, holder and bearer thereof, and he, the said plaintiff, thereby became and was, and still is entitled to demand, have and receive the monies due and remaining unpaid thereon and upon said several coupons, and also the monies thereafter to become due and payable thereon, when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not, at the times when the moneys mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio, at any time since, had at the said The Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due could be, or would have been, paid had a demand thereof been made when the same became due and payable, as provided in and by the terms
66 of said bond, and of said several coupons, nor at any time since, and although often requested so to do, the said town of Scipio has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, being the principal and interest, which accrued upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid,

and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the said several sums, or or any or either of them, or any part thereof, or of any or either of them.

67 And for a 9th count and cause of action, the said plaintiff says and avers:

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie, or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town in said county who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit of said town such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor under their official signatures a bond, or bonds, on which the interest should be made payable annually or semi-annually during the term said money might be borrowed, and the principal and interest of which loan should be madepayable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

68 And wherein and whereby it was further enacted that said assessors appointed to act as commissioners by section first of said act should hold their office till the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called railroad commissioners, to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized according to the requirements of the general railroad law, for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment roll of such town made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or

69 more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad

law of the State of New York, passed April 2, 1850, for constructing, maintaining, and operating a railroad for public use, in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins, and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County, and passing through said town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio as appeared on the assessment roll of said town made next previous to the time of borrowing the money authorized by said act was obtained in pursuance of said act, and filed in
70 clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Scipio on its assessment-roll next previous thereto before the execution and delivery of any bonds by said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, William Taber, who was then supervisor of said town of Scipio, and Calvin Tracey and George Slocum, who were then the railroad commissioners of said town, theretofore duly elected by the electors of said town according to said act, and by virtue thereof, under their several official signatures, duly executed a certain bond of said town, bearing date the said 20th day of May, 1853, and numbered nine in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay to the bearer of said bond No. 9 the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year on surrender of the coupons to said bond attached at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place at the
71 expiration of twenty years from the first day of January, 1853.

That the said William Taber, Calvin Tracey, and George Slocum, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them as aforesaid, duly executed and attached to the said bond No. 9 a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable by the terms of said bond on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each instalment of semi-annual interest which would thereafter become due and payable by the terms and condition of said bond, to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond No. 9 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 9 his certificate in writing duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Scipio, with the affidavit required by

section one of the act referred to by its title in said bond, had been filed in said clerk's office.

72 That the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed on the faith and credit of said town of Scipio, of some person, whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provis ions and in virtue of said act of said legislature, and to secure the payment thereof, with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 9, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof; that the interest upon said bond was duly paid by said town to the holder of said bond up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were upon the payment thereof detached from said bond and cancelled.

73 That afterwards, to wit, on the first day of September, 1874, at the county of Putnam, in said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became and has ever since continued to be and now is the owner, holder, and bearer of said bond No. 9, together with the said coupons thereto attached for the several semi-annual instalments of interest which became due and payable thereon by the terms thereof, after that which was so as aforesaid paid by said town, all of which then and yet remain unpaid; and the said bond No. 9, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained and still remains in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was and still is entitled to demand, have, and receive the monies due and remaining unpaid thereon and upon said several coupons, and also the monies thereafter to become due and payable thereon, when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not, at the times when the moneys mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any

74 time since had at the said The Bank of The State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due could be, or would have been, paid had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond and of said several coupons, nor at any time since; and although often requested so to do, the said town of Scipio has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, being the principal and interest which accrued upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons from the time the same severally became due and payable, still remain due and unpaid, and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the said several sums, or any or either of them, or any part thereof, or of any or either of them.

75 And for a 10th count or cause of action the said plaintiff says and avers:

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga and the assessors of such town in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of said town, such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds, on which the interest should be made payable annually or semi-an-

76 nually during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors appointed to act as commissioners by section first of said act should hold their office until the next annual town meeting of, their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said until a railroad company had been duly organized

77 according to the requirements of the general railroad law for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn and connecting Lake Ontario with the Susquehannah and Cayuga Railroad or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of such town made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached

and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad
78 law of the State of New York, passed April 2, 1850, for constructing, maintaining and operating a railroad for public use in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County, and passing through said town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared on the assessment roll of said town made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Scipio, on its assessment roll next previous thereto, before the execution and delivery of any bonds by said supervisor
79 and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, William Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said town, theretofore duly elected by the electors of said town according to said act, and by virtue thereof, under their several official signatures, duly executed a certain bond of said town, bearing date the said 20th day of May, 1853, and numbered ten, in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay to the bearer of said bond No. 16, the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place at the expiration of twenty years from the first day of January, 1853.

That the said William Taber, Calvin Tracy, and George Slocum,
80 as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them as aforesaid, duly executed and attached to the said bond No. 10, a coupon for the sum of thirty-five dollars, being the semi-annual interest which would thereafter become due and payable by the terms of said bond on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each installment of semi-annual interest, which would thereafter become due and payable by the terms and condition of said bond, to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond No. 10 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 10 his certificate in writing, duly signed

by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper, purporting to be the written assent of two-thirds
81 of the resident tax-payers of said town of Scipio, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed, on the faith and credit of said town of Scipio, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 10, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the
82 clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof, that the interest upon said bond was duly paid by said town to the holder of said bond up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were, upon the payment thereof, detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putnam, in the said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became, and has ever since continued to be and now is, the owner, holder, and bearer of said bond No. 10, together with the said coupons thereto attached for the several semi annual installments of interest which became due and payable thereon by the terms thereof after that which was so as aforesaid paid by said town, all of which then and yet remain unpaid. And the said bond No. 10, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff,
83 and the same has ever since continued and remained, and still remains, in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is, entitled to demand, have, and receive the monies due and remaining unpaid thereon and upon said several coupons, and also the monies thereafter to become due and payable thereon, when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not, at the times when the monies mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any time since, had at the said The Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due could be or would have been paid, had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond, and of said several coupons, nor at any time since, and although often requested so to do, the said town of Scipio has hitherto wholly refused, and still does refuse, to pay the said several sums

84 in said coupons and said bond specified, being the principal and interest which accrued upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid, and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the said several sums, or any or either of them, or any part thereof, or of any or either of them.

85 And for an 11th count or cause of action the said plaintiff says and avers:

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town, in said county, who were appointed by said act as commissioners, to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit of said town such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor under their official signatures a bond or bonds on which the interest

86 should be made payable annually, or semi-annually, during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors appointed to act as commissioners by section first of said act should hold their office until the next annual town meeting of their town, when it should be the duty of the electors of said town to elect *ballot by* in the same manner that town officers were then elected, two commissioners to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized,

87 according to the requirements of the general railroad law, for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn and connecting Lake Ontario with the Susquehannah and Cayuga Railroad or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town as appearing on the assessment-roll of such town, made next previous to the time such money may be borrowed, shall

have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for constructing, maintaining, and operating a railroad for public use in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County, and passing through said town of Scipio.

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That the written assent of two-thirds of the resident persons taxed in said town of Scipio as appeared on the assessment-roll of said town made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid, comprised two-thirds of all the resident tax-payers of said town of Scipio in its assessment-roll next previous thereto, before the execution and delivery of any bonds by said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, William Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said town, theretofore duly elected by the electors of said town according to said act, and by virtue thereof, under their several official signatures, duly executed a certain bond of said town, bearing date the said 20th day of May, 1853, and numbered eleven in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay to the bearer of said bond No. 11, the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place, at the expiration of twenty years from the first day of January, 1853.

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That the said William Taber, Calvin Tracy, and George Slocum, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them, as aforesaid, duly executed and attached to said bond No. 11, a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable by the terms of said bond on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each installment of semi-annual interest which would thereafter become due and payable by the terms and conditions of said bond to and including the semi-annual interest, which

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would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond No. 11 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 11 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Scipio, with the affidavit re-
91 quired by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioner, and acting as such, afterwards, and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed, on the faith and credit of said town of Scipio, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 11, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga, hereinbefore mentioned, thereon endorsed, to him, the said lender of said money, who thereby then and
92 there became and was the owner, holder, and bearer thereof.

That the interest upon said bond was duly paid by said town to the holder of said bond up to and including that which became due and payable on the first day of January, 1858, and coupons therefor were, upon the payment thereof, detached from said bond and cancelled. That afterwards, to wit, on the first day of September, 1874, at the county of Putnam, in the said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became, and has ever since continued to be and now is the owner, holder, and bearer of said bond No. 11, together with the said coupons thereto attached for the several semi-annual installments of interest which became due and payable thereon by the terms thereof after that which was so as aforesaid paid by said town, all of which then and yet remain unpaid.

And the said bond No. 11, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained, and still remains, in his possession as such owner, holder, and bearer thereof, and he, the said
93 plaintiff, thereby became and was, and still is, entitled to demand, have, and receive the monies due and remaining unpaid thereon, and upon said several coupons, and also the monies thereafter to become due and payable thereon when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not at the times when the monies mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any time since had, at the Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said sev-

eral sums acknowledged by said town of Scipio to be due could be or would have been paid had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond, or of said several coupons, nor at any time since, and, although often requested so to do, the said town of Scipio has hitherto wholly refused and still does refuse to pay the said several sums in said coupons and said bond specified, being the principal and interest which accrued
94 upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid, and said defendant, although often requested so to do, has hitherto wholly refused and still does refuse to pay the said several sums, or any or either of them, or any part thereof, or of any or either of them.

95 And for a 12th count or cause of action, the said plaintiff says and avers:

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie, or Cayuga and Susquehannah Railroad," whereby it was amongst other things enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town, in said county, who were appointed by said act as commissioners, to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit of said town such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not to exceed twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor under their official signatures a bond or bonds on which the interest should be made payable annually or semi-annually
96 during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors appointed to act as commissioners by section first of said act, should hold their office until the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized according to the requirements of the general railroad law, for the purpose of
97 constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn and connecting Lake Ontario

with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of such town made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid, comprise two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for construct-
98 ing, maintaining, and operating a railroad for public use, in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn and thence to the termination of said railroad at Little Sodus Bay in the town of Sterling, Cayuga County, and passing through said town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared on the assessment-roll of said town made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached, and filed as aforesaid, comprised two-thirds of all the resident tax-payers of said town of Scipio, on its assessment-roll next previous thereto, before the execution and delivery of any bonds by said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, Will-
99 iam Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said town, theretofore duly elected by the electors of said town according to said act, and by virtue thereof, under their several official signatures, duly executed a certain bond of said town, bearing date the said 20th day of May, 1853, and numbered twelve in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay to the bearer of said bond No. 12, the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached at the Bank of the State of New York in the city of New York, the principal to be reimbursed at the same place at the expiration of twenty years from the first day of January, 1853.

That the said William Taber, Calvin Tracy, and George Slocum, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said
100 bond by them, as aforesaid, duly executed, and attached to the said bond No. 12, a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable, by he terms of said bond, on the first day of July, 1854, and a like coupon

for the sum of thirty five dollars for each installment of semi-annual interest, which would thereafter become due and payable by the terms and condition of said bond, to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond No. 12 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 12, his certificate in writing, duly signed by him in his official character as such clerk of the county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Scipio, with the affidavit required by section one
101 of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed, on the faith and credit of said town of Scipio, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 12, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof. That the interest
102 upon said bond was duly paid by said town to the holder of said bond up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were upon the payment thereof detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putnam in said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became, and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 12, together with the said coupons thereto attached, for the several semi-annual installments of interest which became due and payable thereon by the terms thereof after that which was so as aforesaid paid by said town, all of which then and yet remain unpaid.

And the said bond No. 12, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained, and still remains, in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is, entitled to demand, have, and receive the monies due and remaining unpaid thereon, and upon said several coupons, and also the monies thereafter to become due
103 and payable thereon when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not at

the times when the moneys mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any time since had, at the said The Bank of The State of New York, in the city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due could be or would have been paid had a demand thereof been made when the same became due and payable as provided in and by the terms of said bond and of said several coupons, nor at any time since, and although often requested so to do the said town of Scipio has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, being the principal and interest which accrued upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of the said
104 principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons from the time the same severally became due and payable, still remain due and unpaid, and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the said several sums, or any or either of them, or any part thereof, or of any or either of them.

105 And for a 13th count or cause of action, the said plaintiff says and avers:

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted, that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of said town, such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds on which the interest should be made payable annually or semi-an-
106 nually during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon, and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted, that said assessors, appointed to act as commissioners by section first of said act, should hold their office until the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized, according to the requirements of the general railroad law, for the purpose
107 of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment roll of such town, made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York passed April 2d, 1850, for constructing, maintaining, and operating a railroad for public use in the convey-
108 ance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County, and passing through said town of Scipio. That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared on the assessment-roll of said town made next previous to the time of borrowing the money authorized by said act was obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Scipio on its assessment-roll next previous thereto, before the execution and delivery of any bonds by said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, William
109 Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said town theretofore duly elected by the electors of said town according to said act, and by virtue thereof, under their several official signatures, duly executed a certain bond of said town bearing date the said 20th day of May, 1853, and numbered thirteen in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe and promised to pay to the bearer of said bond No. 13 the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place at the expiration of twenty years from the first day of January, 1853.

That the said William Taber, Calvin Tracy, and George Slocum, as

such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond
110 by them as aforesaid, duly executed and attached to the said bond No. 13, a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable by the terms of said bond on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each installment of semi-annual interest which would thereafter become due and payable by the terms and conditions of said bond, to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond No. 13 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 13 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Scipio, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

111 That the said supervisor and railroad commissioners, and acting as such, afterwards and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed, on the faith and credit of said town of Scipio, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 13, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof.

That the interest upon said bond was duly paid by said town to
112 the holder of said bond up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were upon the payment thereof detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putnam, in the said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became, and has ever since continued to be and now is, the owner, holder, and bearer of the said bond No. 13, together with the said coupons thereto attached, for the several semi-annual installments of interest which became due and payable thereon by the terms thereof, after that which was so as aforesaid paid by said town, all of which then and yet remain unpaid. And the said bond No. 13, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained, and still remains, in his possession as such owner, holder, and bearer thereof,

and he, the said plaintiff, thereby became and was, and still is,
113 entitled to demand, have and receive the monies due and remaining unpaid thereon and upon said several coupons, and also the monies thereafter to become due and payable thereon, when and as the same should thereafter become due and payable, according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not at the times when the monies mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any time since, had, at the said The Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due could be or would have been paid had a demand thereof been made when the same became due and payable as provided in and by the terms of said bond and of said several coupons, nor at any time since, and although often requested so to do, the said town of Scipio has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, being the principal and interest which accrued upon said bond from the first day of January, 1858, and which
114 became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified.

And said plaintiff further avers, that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid, and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the said several sums or any or either of them, or any part thereof, or of any or either of them.

115 And for a 14th count or cause of action, the said plaintiff says and avers—

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie, or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga and the assessors of such town in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of said town, such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds, on which the interest should be made payable annually
116 or semi-annually, during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums, and at such times and place, as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted, that said assessors appointed to act as said commissioners, by section first of said act, should hold their office until the next annual town meeting of their

town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided, that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized,
117 according to the requirements of the general railroad law, for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn and connecting Lake Ontario with the Susquehannah and Cayuga Railroad or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of such town made next previous to the time such money may be borrowed shall have been obtained by such supervisor and commissioners, of some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn, and New York Railroad Company, was duly organized, to wit, on the 23d
118 day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2, 1850, for constructing, maintaining, and operation a railroad for public use, in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins, and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County, and passing through said town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared on the assessment-roll of said town made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town
119 of Scipio on its assessment-roll next previous thereto before the execution and delivery of any bonds by said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, William Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said town, theretofore duly elected by the electors of said town, according to said act and by virtue thereof, under their several official signatures, duly executed a certain bond of said town, bearing date the said 20th day of May, 1853, and numbered 14 fourteen in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe and promised to pay to the bearer of said bond No.

14 the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York,
120 the principal to be reimbursed at the same place at the expiration of twenty years from the 1st day of January, 1853.

That the said William Taber, Calvin Tracy and George Slocum, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them as aforesaid, duly executed and attached to the said bond No. 14 a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable by the terms of said bond on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each installment of semi-annual interest which would thereafter become due and payable by the terms and condition of said bond, to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond No. 14 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 14 his certificate in writing, duly signed by
121 him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Scipio, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioner', and acting as such, afterwards, and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853. at the said town of Scipio, borrowed, on the faith and credit of said town of Scipio, of some person whose name is unknown to the plaintiff, the sum of one thousand dollars, for the purpose and in accordance wi'h the provisions and in virtue of said act of said legislature. And to secure the payment thereof, with in-
122 terest thereon at the rate of seven per cent. per annum, from the time of such borrowing, delivered the said bond No. 14, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof; that the interest upon said bond was duly paid by said town to the holder of said bond up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were, upon the payment thereof, detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874. at the county of Putnam, in said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became, and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 14, together with the said coupons thereto attached, for the several semi-annual installments of interest
123 which became due and payable thereon by the terms thereof, after that which was so as aforesaid paid by said town, all of

which then and yet remain unpaid. And the said bond No. 14, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained, and still remains, in his possession as such holder, owner, and bearer thereof; and he, the said plaintiff, thereby became and was, and still is, entitled to demand, have, and receive the monies due and remaining unpaid thereon, and upon said several coupons, and also the monies thereafter to become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not, at the times when the monies mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any time since, had at the Bank of the State of New York, in the city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due could be or would
124 have been paid had a demand thereof been made when the same become due and payable, as provided in and by the terms of said bond and of said several coupons, nor at any time since, and although often requested so to do, the said town of Scipio has heretofore wholly refused and still does refuse to pay the said several sums in said coupons and said bond specified, being the principal and interest which accrued upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons from the time the same severally became due and payable, still remain due and unpaid, and said defendant, although often requested so to do, has hitherto wholly refused and still does refuse to pay the said several sums or any or either of them, or any part thereof, or of any on either of them.

125 And for a 15th count or cause of action, the said plaintiff says and avers—

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled, "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit of said town such of money as they, said supervisor and *and* assessors might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds, on which the interest should be made payable annually
126 or semi-annually during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors appointed to act as commissioners by section first of said act should hold their office until the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized,
127 according to the requirements of the general railroad law, for the purpose of constructing the aforesaid-described railroad, to wit, a railroad passing through the city of Auburn and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and until the written assent of the two-thirds of the resident persons taxed in said town as appearing on the assessment-roll of such town made next previous to the time such money may be borrowed shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law
128 of the State of New York, passed April 2d, 1850, for constructing, maintaining, and operating a railroad for public use, in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County, and passing through said town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared on the assessment-roll of said town made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Scipio on its assessment-roll next previous thereto before the
129 execution and delivery of any bonds by said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, William Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said town, theretofore duly elected by the electors of said town, according to said act and by virtue thereof, under their several official signatures, duly executed a certain bond of said town, bearing date the said 20th day of May, 1853, and numbered fifteen in the series of bonds executed

under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe and promised to pay to the bearer of said bond No. 15 the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually, on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place at the expiration of twenty years from the first day of January, 1853.

130 That the said William Taber, Calvin Tracy, and George Slocum, as such supervisor and railroad commissioners, as aforesaid, and under their official signatures, at the same time of the execution of said bond by them, as aforesaid, duly executed and attached to the said bond No. 15 a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable by the terms of said bond on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each installment of semi-annual interest which would thereafter become due and payable by the terms and condition of said bond, to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond No 15 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 15 his certificate, in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby

131 he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident taxpayers of said town of Scipio, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bond and coupons, as aforesaid, and after the organization of said railroad company, as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained and filed, as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed on the faith and credit of said town of Scipio, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof, with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 15, with the coupons herein-

132 before mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof. That the interest upon said bond was duly paid by said town to the holder of said bond up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were, upon the payment thereof, detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putnum, in said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became, and has ever since continued to be and now is, the holder, owner, and bearer of said bond No. 15, together with the said coupons thereto attached for

the several semi-annual installments of interest which became due and payable thereon by the terms thereof after that which was so as aforesaid paid by said town, all of which then and yet remain unpaid. And the said bond No. 15, with the said coupons attached, was there-
133 upon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained and still remains in his possession as such owner, holder, and bearer thereof. And he, the said plaintiff, thereby became and was and still is entitled to demand, have, and receive the monies due and remaining unpaid thereon, and upon said several coupons, and also the monies thereafter to become due and payable thereon, when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not, at the times when the monies mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any time since had, at the said The Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due could be or would have been paid had a demand thereof been made when the same became due and payable as provided in and by the terms of said bond, and of
134 said several coupons, nor at any time since, and although often requested to so do, the said town of Scipio has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bonds specified, being the principal and interest which accrued upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid, and said defendant, although often requested to do so, has hitherto wholly refused and still does refuse to pay the said several sums, or any or either of them, or any part thereof, or of any or either of them.

135 And for a 16th count or cause of action the said plaintiff says and avers—

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York entitled "An act to authorize any town in the county Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," whereby it was amongst other things enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit of said town such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not to exceed twenty years, with such rate of interest as might be agreed upon not exceeding seven per cent. per annum, and to ex-
136 ecute therefor under their official signatures a bond or bonds on which the interest should be made payable annually or semi-annually during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and

at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors appointed to act as commissioners by section first of said act should hold their office until the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners to be called "railroad commissioners" to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts au-
137 thorized by said act until a railroad company has been duly organized according to the requirements of the general railroad law, for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of such town made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d
138 day of August, 1852, according to the provisions of the general railroad law of the State of New York passed April 2d, 1850, for constructing, maintaining, and operationg a railroad for public use, in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County, and passing through said town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared on the assessment-roll of said town made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act, attached to said written assents and statement, to the effect that the persons whose wrtiten assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Scipio
139 on its assessment-roll next previous thereto, before the execution and delivery of any bonds by said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, William Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said town, theretofore duly elected by the electors of said town, according to said act and by virtue thereof, under their several official signatures duly executed a certain bond of said town, bearing date the said 20th day of

May, 1853, and numbered sixteen in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of New York, acknowledged itself to owe and promised to pay to the bearer of said bond No. 16 the sum of one thousand dollars with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place at the expiration of twenty years from the first day of January, 1853.

140 That the said William Taber, Calvin Tracy, and George Slocum as such supervisor and railroad commissioner as aforesaid, and under their official signatures, at the same time of the execution of said bond by them as aforesaid, duly executed and attached to said bond No. 16 a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable, by the terms of said bond, on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each installment of semi-annual interest which would thereafter become due and payable by the terms and condition of said bond, to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards and before said bond No. 16 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 16 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, where-

141 by he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Scipio, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards and after the execution of said bonds and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed on the faith and credit of said town of Scipio, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof, with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 16 with the cou-

142 pons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof. That the interest upon said bond was duly paid by said town to the holder of said bond, up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were upon the payment thereof detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putnam, in the said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and be.

came, and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 16, together with the said coupons thereto attached, for the several semi-annual installments of interest which became due and payable thereon by the terms thereof, after that which was so as aforesaid paid by said town, all of which then and yet remain unpaid. And the said bond No. 16, with the said coupons at-
143 tached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained and still remains in his possession as such owner, holder, and bearer thereof; and he, the said plaintiff, thereby became and was and still is entitled to demand, have, and receive the monies due and remaining unpaid thereon, and upon said several coupons, and also the monies thereafter to become due and payable thereon, when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not at the times when the monies mentioned in said bond, and in said several coupons, became due and payable, nor has said town of Scipio at any time since had, at the said The Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due could be or would have been paid, had a demand thereof been made when the same became due and payable as provided in and by the terms of
144 said bond and of said several coupons, nor at any time since; and although often requested so to do, the said town of Scipio has hitherto wholly refused and still does refuse to pay the said several sums in said coupons and said bond specified, being the principal and interest which accrued upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of said principal sum of one thousand dollars together with interest thereon from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons from the time the same severally became due and payable, still remain due and unpaid; and said defendant, although often requested so to do, has hitherto wholly refused and still does refuse to pay the said several sums, or any or either of them, or any part thereof, or of any or either of them.

145 And for a 17th count or cause of action the said plaintiff says and avers:

That heretofore, to wit, on the 16th day of April, 1862, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town in said county who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit of said town such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor under their official signatures a bond or bonds

146 on which the interest should be made payable annually or semi-annually during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors appointed to act as commissioners by section first of said act should hold their office till the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized according
147 to the requirements of the general railroad law for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn and connecting Lake Ontario with the Susquehannah and Cayuga Railroad or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town as appearing on the assessment roll of such town made next previous to the time such money may be borrowed shall have been obtained by such supervisor or commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d
148 day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2, 1850, for constructing, maintaining, and operating a railroad for public use, in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County, and passing through said town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared on the assessment roll of said town made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act and filed in the clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said
149 town of Scipio on its assessment roll next previous thereto, before the execution and delivery of any bonds of said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, William Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said town,

theretofore duly elected by the electors of said town, according to said act and by virtue thereof, under their several official signatures duly executed a certain bond of said town, bearing date the said 20th day of May, 1853, and numbered seventeen in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to own and promised to pay to the bearer of said bond No. 17 the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place at the expiration of twenty years from the first day of January, 1853.

150 That the said William Taber, Calvin Tracy, and George Slocum, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them, as aforesaid, duly executed and attached to the said bond No. 17 a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable by the terms of said bond on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each installment of semi-annual interest which would thereafter become due and payable by the terms and condition of said bond, to and including the semi annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond No. 17 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 17 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cay-

151 uga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Scipio, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed on the faith and credit of said town of Scipio, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof with interest thereon at the rate of seven per cent. per annum from the time

152 of such borrowing, delivered the said bond No. 17, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof. That the interest upon said bond was duly paid by said town to the holder of said bond, up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were, upon the payment thereof, detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putnam, in said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became, and has ever since continued to be and now is, the owner, holder, and bearer of said bond No. 17, together with the said coupons thereto attached for the several semi-annual installments of interest which became due and payable thereon by the terms thereof after that which was so as aforesaid paid by said town, all of which then and yet remains unpaid.

153 And the said bond No. 17, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained and still remains in his possession as such owner, holder and bearer thereof; and he, the said plaintiff, thereby became and was and still is entitled to demand, have and receive the monies due and remaining unpaid thereon and upon said several coupons, and also the monies thereafter to become due and payable thereon when and as the same should thereafter become due and payable, according to the terms and conditions thereof.

And this plaintiff avers that the said town of Scipio had not at the times when the monies mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any time since, had at the said The Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due could be or would have been paid, had a demand thereof been made when the same became due and payable, as provided in and by the

154 terms of said bond and of said several coupons, nor at any time since, and although often requested so to do, the said town of Scipio has hitherto wholly refused and still does refuse to pay the said several sums in said coupons and said bond specified, being the principal and interest which accrued upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid, and said defendant, although often requested so to do, has hitherto wholly refused and still does refuse to pay the said several sums or any or either of them, or any part thereof, or of any or either of them.

155 And for an 18th count or cause of action, the said plaintiff says and avers:

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie, or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit of

said town such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds, on which interest should be made payable annually or semi annually
156 during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors appointed to act as commissioners by section first of said act should hold their office till the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized according
157 to the requirement of the general railroad law, for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of such town made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisons of the general rail-
158 road law of the State of New York, passed April 2d, 1850, for constructing, maintaining, and operating a railroad for public use, in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County, and passing through said town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared on the assessment-roll of said town made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written statement and assents, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town

of Scipio on its assessment-roll next previous thereto before
159 the execution and delivery of any bonds by said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, William Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said town, theretofore duly elected by the electors of said town, according to said act, and by virtue thereof, under their several official signatures, duly executed a certain bond of said town, bearing date the said 20th day of May, 1853, and numbered eighteen in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe and promised to pay to the bearer of said bond No. 18 the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place at the expiration of twenty years from the first day of January, 1853.

160 That the said William Taber, Calvin Tracy, and George Slocum, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them as aforesaid, duly executed and attached to the said bond No. 18 a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable by the terms of said bond on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each installment of semi-annual interest which would thereafter become due and payable by the terms and condition of said bond, to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond No. 18 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 18 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga,
161 whereby he, the said clerk, under his official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax payers of said town of Scipio, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required to section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed, on the faith and credit of said town of Scipio, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof, with interest thereon at the rate of seven per cent. per annum from the time
162 of such borrowing, delivered the said bond No. 18, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga, hereinbefore mentioned,

thereon endorsed to him, the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof. That the interest upon said bond was duly paid by said town to the holder of said bond up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were, upon the payment thereof, detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putnam, in said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became, and has ever since continued to be and now is, the owner, holder, and bearer of said bond No. 18, together with the said coupons thereto attached, for the several semi-annual instalments of interest which became due and payable thereon by the terms thereof after that which was so, as aforesaid, paid by said town, all of which then and yet
163 remains unpaid. And the said bond No. 18, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained, and still remains, in his possession as such owner, holder, and bearer thereof; and he, the said plaintiff, thereby became, and was and still is, entitled to demand, have, and receive the monies due and remaining unpaid thereon, and upon said several coupons, and also the monies thereafter to become due and payable thereon, when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not, at the times when the monies mentioned in said bond and in said several coupons became due and payable, nor has the said town of Scipio at any time since had, at the said The Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due could be or could have been paid, had a demand thereof been made
164 when the same became due and payable as provided in and by the terms of said bond and of said several coupons, nor at any time since; and, although often requested so to do, the said town of Scipio has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, being the prinpal and interest which accrued upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on said several days in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons from the time the same severally became due and payable, still remain due and unpaid; and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the said several sums, or any or either of them, or any part thereof, or any or either of them.

165 And for a 19th count or cause of action, the said plaintiff says and avers:

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario

to the New York and Erie or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in said county of Cayuga, and the assessors of such town in said county, who were appointed by said act as commissioners, to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of said town, such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a
166 bond or bonds on which the interest should be made payable annually or semi-annually during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors appointed to act as commissioners by section first of said act should hold their office till the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized
167 according to the requirements of the general railroad law for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment roll of such town made next previous to the time such money may be borrowed shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident taxpayers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad
168 law of the State of New York, passed April 2d, 1850, for constructing, maintaining, and operating a railroad for public use, in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins, and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County, and passing through said town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared on the assessment roll of said town

made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act, and filed in the clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident taxpayers of said town of Scipio on its assessment-roll next previous thereto before the execution and delivery of any bonds by said supervisor and commissioners of said town.

169 That afterwards, to wit, on the 20th day of May, 1853, William Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said town, theretofore duly elected by the electors of said town according to said act, and by virtue thereof, under their several official signatures, duly executed a certain bond of said town bearing date the said 20th day of May, 1853, and numbered nineteen in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe and promised to pay to the bearer of said bond No. 19 the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place at the expiration of twenty years from the first day of January, 1853.

170 That the said William Taber, Calvin Tracy, and George Slocum, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them as aforesaid, duly executed and attached to the said bond No. 19 a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable by the terms of said bond on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each installment of semi-annual interest which would thereafter become due and payable by the terms and condition of said bond, to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond No. 19 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 19 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper

171 purporting to be the written assent of two-thirds of the resident tax-payers of said town of Scipio, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed, on the faith and credit of said town of Scipio, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions and

in virtue of said act of said legislature, and to secure the payment thereof, with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 19, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuaga hereinbefore mentioned thereon
172 endorsed, to him, the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof. That the interest upon said bond was duly paid by said town to the holder of said bond up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were, upon the payment thereof, detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putnam, in said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 19, together with the said coupons thereto attached for the several semi-annual installments of interest which became due and payable thereon by the terms thereof, after that which was so as aforesaid paid by said town, all of which then and yet remains unpaid. And the said bond No. 19, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained and still remains, in
173 his possession as such owner, holder, and bearer thereof, an' he, the said plaintiff, thereby became and was, and still is, entitled to demand, have, and receive the monies due and remaining unpaid thereon and upon said several coupons, and also the monies thereafter to become due and payable thereon, when and as the same should thereafter become due and payable, according to the terms and condition thereof.

And the said plaintiff avers that the said town of Scipio had not, at the times when the monies mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any time since had, at the said The Bank of the State of New York, in the city of New York, or elsewhere, any money or means, whereby the said several sums acknowledged by the said town of Scipio to be due could be or would have been paid had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond and of said several coupons, nor at any time since, and although often requested so to do, the said town of Scipio has hitherto
174 wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, being the principal and interest which accrued upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on said several days, in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid, and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the said several sums, or any or either of them, or any part thereof, or of any or either of them.

175 And for a 20th count or cause of action, the said plaintiff says and avers:

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town, in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of said town, such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor under their official signatures a bond or bonds on which the interest should be made payable annually, or semi annually,
176 during the term said money might be borrowed; and the principal and interest of which loan should be made payable in such sums, and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors appointed to act as commissioners by section first of said act should hold their office till the next annual town meeting by their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisior and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized according to the requirements of the general railroad law for the purpose of
177 constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of such town, made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervior or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for constructing, maintaining, and operating a railroad for public use, in the conveyance of persons and property, commencing at some point
178 on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay in the

town of Sterling, Cayuga County, and passing through said town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared on the assessment-roll of said town made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Scipio on its assessment-roll next previous thereto, before the execution and delivery of any bonds by said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, William
179 Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said town, theretofore duly elected by the electors of said town according to said act, and by virtue thereof, under their several official signatures, duly executed a certain bond of said town, bearing date the said 20th day of May, 1853, and numbered twenty in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe and promised to pay to the bearer of said bond No. 20 the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place at the expiration of twenty years from the first day of January, 1853.

That the said William Taber, Calvin Tracy, and George Slocum, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of
180 said bond by them as aforesaid, duly executed and attached to said bond No. 20 a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable by the terms of said bond on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each installment of semi-annual interest which would thereafter become due and payable by the terms and conditions of the said bond, to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 20 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Scipio, with the affidavit required by section one of the act refferred to by its title in said bond, had been filed in said clerk's office.

181 That the said supervisor and railroad commissioner, and acting as such, afterwards, and after the execution of said bonds and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the res-

ident tax-payers of said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed, on the faith and credit of said town of Scipio, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof, with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 20, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said lender of said money, who thereby and then and there became and was the owner, holder, and bearer thereof.

182 That the interest upon said bond was duly paid by said town to the holder of said bond up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were, upon the payment thereof, detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putnam, in said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became, and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 20, together with the said coupons thereto attached for the several semi-annual installments of interest which became due and payable thereon by the terms thereof, after that which was so as aforesaid paid by said town, all of which then and yet remains unpaid. And the said bond No. 20, with the coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained, and still remains, in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is, entitled to demand,

183 have, and receive the monies due and remaining unpaid thereon and upon said several coupons, and also the monies thereafter to become due and payable thereon, when and as the same should thereafter become due and payable, according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not, at the times when the monies mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any time since had, at the said The Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due could be or would have been paid had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond and of said several coupons, nor at any time since, and although often requested so to do the said town of Scipio has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, being the principal and interest

184 which accrued upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on said several days, in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so

as aforesaid mentioned in said several coupons from the time the same severally became due and payable, still remain due and unpaid, and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the said several sums, or any or either of them, or any part thereof, or of any or either of them.

185 And for a 21st count or cause of action the said plaintiff says and avers:

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town in said county who were appointed by said act as commissioners, to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of said town, such sum of money as they, said superior and assessors might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signature, a bond or bonds on which the interest should be made payable annually or semi-annually during the term said money might be borrowed, and the principal and in-

186 terest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors appointed to act as commissioners by section first of said act should hold their office till the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provision of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized, according to the requirements of the general railroad law, for the purpose of constructing the aforesaid described railroad, to wit, a railroad pass-

187 ing through the city of Auburn and connecting Lako Ontario with the Susquehannah and Cayuga Railroad or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town as appeared on the assessment-roll of such town made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of

August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for constructing, maintaining, and operating a railroad, for public use, in the conveyance of persons and property, commencing at some point on the Susque-
188 hannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay in the town of Sterling, Cayuga County, and passing through said town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio as appeared on the assessment-roll of said town made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Scipio on its assessment-roll next previous thereto before the execution and delivery of any bonds by said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, William Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said
189 town, theretofore duly elected by the electors of said town according to said act, and by virtue thereof, under their several official signatures duly executed a certain bond of said town, bearing date the said 20th day of May, 1853, and numbered twenty-one in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay, to the bearer of said bond No. 21 the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place at the expiration of twenty years from the first day of January, 1853.

That the said William Taber, Calvin Tracy, and George Slocum, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them as aforesaid, duly executed and attached to the said bond No. 21 a coupon for the sum of thirty-five dollars, being the semi-annual
190 interest which would become due and payable by the terms of said bond on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each installment of semi-annual interest which would thereafter become due and payable by the terms and condition of said bond, to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond No. 21 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 21 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Scipio, with the affidavit required by section one

of the act referred to by its title in said bond, had been filed in said clerk's office.

191 That the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bonds and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed, on the faith and credit of said town of Scipio, of some person whose name is unknown to the plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof, with interest thereon, at the rate of seven per cent. per annum, from the time of such borrowing, delivered the said bond No. 21, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof.

192 That the interest upon said bond was duly paid by said town to the holder of said bond up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were, upon the payment thereof, detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putnam, in said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became, and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 21, together with the said coupons thereto attached for the several semi annual installments of interest which became due and payable thereon by the terms thereof after that which was so as aforesaid paid by said town, all of which then and yet remains unpaid. And the said bond No. 21, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained, and still remains, in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is, entitled to de-

193 mand, have, and receive the monies due and remaining unpaid thereon, and upon said several coupons, and also the monies thereafter to become due and payable thereon, when and as the same should thereafter become due and payable, according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not, at the times when the moneys mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any time since had, at the said The Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due could be or would have been paid had a demand thereof been made when the same became due and payable as provided in and by the terms of said bond and of said several coupons, nor at any time since, and although often requested so to do the said town of Scipio has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, being the principal and interest which

194 accrued upon said bond from the first day of January, 1858, and

which became due and payable to the owner of said bond and said coupons on said several days, in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so as as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid; and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the said several sums, or any or either of them, or any part thereof, or any or either of them.

195 And for a 22d count or cause of action, the said plaintiff says and avers:

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Susquehannah and Cayuga Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the county of Cayuga and the assessors of such town, in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of said town, such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds on

196 which the interest should be made payable annually or semi-annually during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors appointed to act as commissioners by section first of said act should hold their office until the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act; and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

And it was in said act further provided that the said surpervisor and commissioners should have no power to do any of the acts authorized

197 by said act until a railroad company had been duly organized, according to the requirements of the general railroad law, for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn and connecting Lake Ontario with the Susquehannah and Cayuga Railroad or the New York and Erie Railroad, and until the written assent of two thirds of the resident persons taxed in said town as appearing on the assessment-roll of such town, made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the

persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 22d day of August, 1852, according to the provisions of the general railroad
198 law of the State of New York, passed April 2d, 1850, for constructing, maintaining, and operating a railroad, for public use, in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay in the town of Sterling, Cayuga County, and passing through said town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio as appeared on the assessment-roll of said town made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Scipio, on its assessment-roll next previous thereto, before the execution
199 and delivery of any bonds by said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, William Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said town, theretofore duly elected by the electors of said town, according to said act, and by virtue thereof, under their several official signatures duly executed a certain bond of said town, bearing date the said 20th day of May, 1853, and numbered twenty-two in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay, to the bearer of said bond No. 22, the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually, on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place at the expiration of twenty years from the first day of January, 1853.

200 That the said William Taber, Calvin Tracy, and George Slocum as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them as aforesaid, duly executed and attached to the said bond No. 22, a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable by the terms of said bond on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each installment of semi-annual interest which would thereafter become due and payable by the terms and conditions of said bond, to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond No. 22 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 22, his certificate in writing, duly signed by him in

his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident
201 tax-payers of said town of Scipio, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed, on the faith and credit of the said town of Scipio, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof, with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 22, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of
202 Cayuga hereinbefore mentioned thereon endorsed, to him, the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof.

That the interest upon said bond was duly paid by said town to the holder of said bond up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were upon the payment thereof detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putnam, in the said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became, and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 22, together with the said coupons thereto attached for the several semi-annual installments of interest which became due and payable thereon by the terms thereof, after that which was so as aforesaid paid by said town, all of which then and yet remains unpaid.

And the said bond No. 22, with the said coupons attached, was
203 thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained, and still remains, in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is, entitled to demand, have, and receive the monies due and remaining unpaid thereon and upon said several coupons, and also the monies thereafter to become due and payable thereon, when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not, at the times when the monies mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any time since had, at the said The Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due could be or would have been paid had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond and of said several coupons, nor at any time since, and al-
204 though often requested so to do, the said town of Scipio has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, being the principal

and interest which accrued upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on said several days, in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid, and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the said several sums, or any or either of them, or any part thereof, or of any or either of them.

205 And for a 23d count or cause of action the said plaintiff says and avers:

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad, whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the county of Cayuga, and the assessors of such town in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of said town, such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefore, under their official signatures, a bond or bonds on which the interest should be made payable annually or semi-an-

206 nually, during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors appointed to act as commissioners by section first of said act should hold their office until the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized, according to the requirments of the general railroad law, for the purpose of

207 constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town as appeared on the assessment-roll of such town, made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some

one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for constructing,
208 maintaining, and operating a railroad, for public use, in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay in the town of Sterling, Cayuga County, and passing through said town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared on the assessment-roll of said town, made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax payers of said town of Scipio, on its assessment-roll next previous thereto, before the execution and delivery of any bonds by said supervisor and commissioners of said town.

209 That afterwards, to wit, on the 20th day of May, 1853, William Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said town, theretofore duly elected by the electors of said town, according to said act, and by virtue thereof, under their several official signatures, duly executed a certain bond of said town, bearing date the said 20th day of May, 1853, and numbered twenty-three in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay, to the bearer of said bond No. 23 the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place at the expiration of twenty years from the first day of January, 1853.

That the said William Taber, Calvin Tracy, and George Slocum,
210 as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them as aforesaid, duly executed and attached to the said bond No. 23 a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable, by the terms of said bond, on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each installment of semi-annual interest which would thereafter become due and payable by the terms and condition of said bond, to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond No. 23 was negotiated or deliv-

ered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 23 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident
211 tax-payers of said town of Scipio, with the affidavit required by section one of the act ref/er'ed to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed, on the faith and credit of said town of Scipio, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof, with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 23, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed,
212 to him, the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof. That the interest upon said bond was duly paid by said town to the holder of said bond up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were, upon the payment thereof, detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putnam, in said State of Florida, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became, and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 23, together with the said coupons thereto attached for the several semi-annual installments of interest which became due and payable thereon by the terms thereof, after that which was so as aforesaid paid by said town, all of which then and yet remains unpaid. And the said bond No. 23, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained, and still remains, in
213 his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is, entitled to demand, have, and receive the monies due and remaining unpaid thereon, and upon said several coupons, and also the monies thereafter to become due and payable when and as the same should thereafter become due & payable, according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not at the times when the monies mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any time since had, at the Bank of the State of New York, in the said city of New York, or elsewhere, any money or means, whereby the said several sums acknowledged by said town of Scipio to be due could be or would have been paid had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond, and of said several coupons, nor at any time since, and although often

requested so to do, the said town of Scipio has hiterto wholly refused,
and still does refuse, to pay the said several sums in said coupons
214 and said bond specified, being the principal and interest which
accrued upon said bond from the first day of January, 1858, and
which became due and payable to the owner of said bond and said coupons on said several days, in that behalf hereinbefore specified.

And this plaintiff further avers that the whole of the principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid, and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the said several sums, or any or
either of them, or any part thereof, or of any or either of them.
215 And for a 24th count or cause of action, the said plaintiff says
and avers:

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town, in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of said town, such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond
or bonds on which the interest should be made payable annually
216 or semi-annually during the term said money might be borrowed,
and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors appointed to act as commissioners by section first of said act should hold their office until the next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act; and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized, according to the requirements of the general railroad law, for the purpose
217 of constructing the aforesaid described railroad, to wit, a railroad
passing through the city of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of such

town, made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for constructing, mainta'n-
ing, and operating a railroad for public use, in the conveyance of
218 persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad, at Little Sodus Bay, in the town of Sterling, Cayuga County, and passing through said town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared on the assessment roll of said town made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act, attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Scipio on its assessment roll next previous thereto, before the execution and delivery of any bonds by said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, William
219 Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said town, theretofore duly elected by the electors of said town according to said act, and by virtue thereof, under their several official signatures, duly executed a certain bond of said town, bearing date the said 20th day of May, 1853, and numbered twenty-four in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe and promised to pay to the bearer of said bond No. 24 the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursed at the same place at the expiration of twenty years from the first day of January, 1853.

That the said William Taber, Calvin Tracy, and George Slocum, as such supervisor and railroad commissioners as aforesaid, and under
their official signatures, at the same time of the execution of said
220 bond by them as aforesaid, duly executed and attached to the said bond No. 24 a coupon for the sum of thirty-five dollars, being the semi-annual interest which would become due and payable, by the terms of said bond, on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each installment of semi-annual interest which would thereafter become due and payable by the terms and condition of said bond, to and including the semi-annual interest which

would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond No. 24 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 24 his certificate in writing duly signed by him in his official character, as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Scipio, with the affidavit re-
221 quired by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed, on the faith and credit of said town of Scipio, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof, with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 24, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said lender of said money, who thereby then and there
222 became and was the owner, holder, and bearer thereof. That the interest upon said bond was duly paid by said town to the holder of said bond up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were upon the payment thereof detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putnam, in the said State of Florida, he, the said plaintiff, for a valuable consideration, then paid by him therefor, purchased and became, and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 24, together with the said coupons thereto attached for the several semi-annual installments of interest which became due and payable thereon by the terms thereof, after that which was so as aforesaid paid by said town, all of which then and yet remain unpaid. And the said bond No. 24, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained, and still remains, in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is, entitled to demand, have,
223 and receive the monies due and remaining unpaid thereon and upon said several coupons, and also the monies thereafter to become due and payable thereon, when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not at the times when the moneys mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any time since, had at the said The Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due could be

or would have been paid had a demand thereof been made when the same became due and payable as provided in and by the terms of said bond and of said several coupons, nor at any times since, and although often requested so to do, the said town of Scipio has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, being the principal and interest which accrued upon said bond from the first day of January, 1858, and which became due and payable to the owner of said bond and said coupons on
224 said several days in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally 'came due and payable, still remain due and unpaid, and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the said several sums, or any or either of them, or any part thereof, or of any or either of them.

225 And for a 25th count or cause of action, the said plaintiff says and avers:

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passes by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town in said county, who were appointed by said act as commissioners, to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit of said town such sums of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds on which the interest should be made payable annually or semi-
226 annually during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors, appointed to act as commissioners by section first of said act, should hold their office until the next annual town meeting of their town, when it should be the duty of the electors of said town to elect, by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should, at all times, be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized according to the requirements of the general railroad law, for the purpose
227 of constructing the aforesaid described railroad, to wit, a rail-

road passing through the city of Auburn and connecting Lake Ontario with the Susquehannah and Cayuga Railroad or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment roll of such town made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town of its assessment roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2, 1850, for constructing, maintaining, and operating a railroad for public use in the convey-
228 ance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County, and passing through said town of Scipio.

That the written assent of two-thirds of the resident persons taxed in said town of Scipio, as appeared on the assessment roll of said town made next previous to the time of borrowing the money authorized by said act, was obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act, attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town of Scipio on its assessment roll next previous thereto, before the execution and delivery of any bonds by said supervisor and commissioners of said town.

That afterwards, to wit, on the 20th day of May, 1853, William
229 Taber, who was then supervisor of said town of Scipio, and Calvin Tracy and George Slocum, who were then the railroad commissioners of said town, theretofore duly elected by the electors of said town, according to said act, and by virtue thereof, under their several official signatures, duly executed a certain bond of said town, bearing date the said 20th day of May, 1853, and numbered twenty-five in the series of bonds executed under and in virtue of said act, whereby the said town of Scipio, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay to the bearer of said bond No. 25, the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, at the city of New York, the principal to be reimbursed at the same place at the expiration of twenty years from the first day of January, 1853.

That the said William Taber, Calvin Tracy, and George Slocum, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond
230 by them as aforesaid, duly executed and attached to the said bond No. 25 a coupon for the sum of thirty five dollars, being the

semi-annual interest which would become due and payable by the terms of said bond on the first day of July, 1854, and a like coupon for the sum of thirty-five dollars for each installment of semi-annual interest which would thereafter become due and payable by the terms and condition of said bond to and including the semi-annual interest which would become due and payable thereon on the first day of January, 1873.

That afterwards, and before said bond No. 25 was negotiated or delivered by said town of Scipio to any person, the then clerk of said county of Cayuga, at the request of the said town of Scipio, made and endorsed upon said bond No. 25 his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Scipio, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

231 That the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Scipio had been obtained an' filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the said 20th day of May, 1853, at the said town of Scipio, borrowed, on the faith and credit of said town of Scipio, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions and in virtue of said act of said legislature, and to secure the payment thereof, with interest thereon at the rate of seven per cent. per annum from the time of such borrowing, delivered the said bond No. 25, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said lender of said money, who thereby then and there became and was the owner, holder, and bearer thereof. That the

232 interest upon said bond was duly paid by said town to the holder of said bond up to and including that which became due and payable on the first day of January, 1858, and the coupons therefor were, upon the payment thereof, detached from said bond and cancelled.

That afterwards, to wit, on the first day of September, 1874, at the county of Putnam, in the said State of Florida, he, the plaintiff, for a valuable consideration then paid by him therefor, purchased and became, and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 25, together with the said coupons thereto attached, for the several semi-annual installments of interest which became due and payable thereon by the terms thereof after that which was so as aforesaid paid by said town, all of which then and yet remain unpaid. And the said bond No. 25, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained, and still remains, in his possession as such owner, holder, and bearer thereof, and he, the said

233 plaintiff, thereby became and was, and still is, entitled to demand, have and receive the monies due and remaining unpaid thereon, and upon said several coupons, and also the monies thereafter to become due and payable thereon, when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that the said town of Scipio had not at the times when the monies mentioned in said bond and in said several coupons became due and payable, nor has said town of Scipio at any time since had, at the said The Bank of the State of New York, at the city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said town of Scipio to be due could be or would have been paid had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond and of said several coupons, nor at any time since, and although often requested so to do, the said town of Scipio has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, being the principal and interest which accrued upon said bond from the first day of January, 1858, and
234 *and* which became due and payable to the owner of said bond and said coupons on said several days, in that behalf hereinbefore specified.

And said plaintiff further avers that the whole of the said principal sum of one thousand dollars, together with the interest thereon, from the first day of January, 1873, and the sums in said several coupons for semi-annual interest specified, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid; and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the said several sums, or any or either of them, or any part thereof, or of any or either of them.

Wherefore the said plaintiff demands judgement against the said defendant for the said several twenty-five principal sums of one thousand dollars each, with interest thereon from the said first day of January, one thousand eight hundred and fifty-eight; also for the thirty several sums of thirty-five dollars each specified in said several coupons
235 above mentioned, together with interest upon each of said several sums of thirty-five dollars each from the several times when the same severally became due and payable, together with the costs and disbursements of this action.

D. WRIGHT,
Pl'ff's Att'y, Auburn, N. Y.

236 (Indorsed:) U. S. C. C. N. D. of N. Y. William P. Wright ag'st The Town of Scipio. Complaint. D. Wright, pl'tiff's att'y, Auburn, N. Y. Filed September 5th, 1874.

237 United States circuit court, northern district of New York.

WILLIAM P. WRIGHT }
vs.
THE TOWN OF SCIPIO. }

SEPTEMBER 5, 1874.

On filing declaration or complaint in this case, and on motion of David Wright, plaintiff's attorney, ordered that the defendant herein appear and plead or answer thereto within twenty days after service of a copy thereof and notice of the entry of this rule, or judgement, &c.

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239 United States circuit court, northern district of New York.

WILLIAM P. WRIGHT
vs.
THE TOWN OF SCIPIO.

OCTOBER 15, 1874.

On filing answer in this case, and on motion of S. Edwin Day, ordered that his appearance as attorney for the defendant herein be, and the same is hereby, entered; and that this cause be now docketed for said defendant.

240

241 United States district court, northern district of New York.

WILLIAM P. WRIGHT
ag'st
THE TOWN OF SCIPIO.

And the said Town of Scipio, the defendant above named, by S. Edwin Day, its attorney, comes and defends this action and says:

That it denies the whole of the plaintiff's complaint or declaration herein, and each and every allegation therein contained, except that it admits the passage, on the 16th day of April, 1852, of the act of the legislature of the State of New York, and the organization of the railroad company mentioned and referred to in said complaint or declaration.

Second. And for a second and further defence and answer herein, the said defendant says that the said plaintiff ought not to have or maintain his aforesaid action herein against this defendant, because, it says, that this defendant, the said Town of Scipio, is not a citizen of any State of Territory of the United States, but is one of the civil and political divisions of the State of New York, and that this court has
242 no jurisdiction of this defendant, the said Town of Scipio.

Third. And for a third and further defence and answer herein, this defendant says that the said plaintiff ought not to have or maintain this his aforesaid action thereof against this defendant to recover the said several sums of money alleged in said complaint to have accrued by way of interest upon said alleged bonds and coupons in said complaint mentioned on or prior to the first day of July, one thousand eight hundred and sixty-eight, because it says that the same did not, nor did any or either of them, or any part or portion thereof, accrue and become due and payable within six years next before the commencement of this suit, and as to remaining portions of said several sums of money in said complaint mentioned, the said defendant says it does not owe the same, or any or either of them, or any part or portion thereof, either in manner and form as stated and set forth in said complaint, or otherwise.

Fourth. And for a further and fourth defence and answer herein, the said defendant says that the said plaintiff ought not to have or maintain this his aforesaid action thereof against this defendant,
243 because it says that the said several supposed causes of action in said plaintiff's complaint mentioned did not, nor did any or either of them, accrue to the said plaintiff at any time within six years, before the commencement of this suit, in manner and form as the said plaintiff has above thereof complained against this defendant, or otherwise.

Fifth. And for a further and fifth defence and answer herein, the said defendant says that the said plaintiff ought not to have or maintain this action against the defendant, because it says that the several supposed bonds and coupons in said complaint mentioned and referred to are not, nor are any or either of them, the deed, obligation, promise, or undertaking of this defendant, in any way or manner, or for any cause whatever.

Sixth. And for a further and sixth defence and answer herein, this defendant says that the said plaintiff ought not to have or maintain this action herein against this defendant, the said Town of Scipio, because it says that the supervisor and assessors of the said town of Scipio in office when the said act of the legislature of the State of New York just mentioned and referred to in said complaint was passed and became a law, did not, nor did any or either of them, or any officer
244 or officers of said town, or any other person or persons whomsoever, ever obtained or filed in the clerk's office of Cayuga County, the written assent of two-thirds of the resident persons taxed in said town as appeared on any assessment-roll of said town whatever, as required by said acts, and that the said town of Scipio never was authorized or empowered in any way or for any cause or purpose whatever, nor was any person or persons, officer or officers of said town or otherwise, ever authorized or empowered in any way or manner whatsoever or for any cause or purpose whatsoever, to borrow any money or to execute or deliver for the said town of Scipio the said several alleged bonds and coupons in said complaint mentioned, or any or either of them, in any way or for any cause or purpose whatsoever, and that said several alleged bonds and coupons are illegal and void, and of no force or effect whatsoever, and impose no obligation on or by said town in any way or for any cause whatsoever.

Seventh. And for a further and seventh answer and defence herein, this defendant says that the said plaintiff ought not to have
245 or maintain this action against this defendant, because it says that the supervisor and assessors of said town of Scipio in office when said act of the legislature of the State of New York first mentioned and referred to in said complaint or declaration was passed and became a law, did not, nor did any or either of them, or any officer or officers of said town or any other person or persons whomsoever, ever make or file in the office of the clerk of Cayuga County any affidavit to the effect that the persons whose written assent was thereto attached and filed as aforesaid, to wit, in the office of said clerk, comprise two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto, as required by said act, and that therefore the said town of Scipio never was authorized or empowered, nor was any person or persons, officer or officers, ever authorized or empowered to borrow any money on the faith and credit of said town, or on the faith and credit of said bonds and coupons in said complaint mentioned, in any way whatsoever, or to execute or deliver said bonds and coupons in said complaint mentioned and referred
246 to, or any or either of them; and that the same are, therefore, illegal and void.

Eighth. And for a further and eighth defence and answer herein this defendant says that the said plaintiff ought not to have or maintain this action herein against this defendant, the said Town of Scipio, because, it says, that the said William Taber, Calvin Tracy, & George Slocum, in said complaint mentioned, never were, nor was any or either of them, ever the agent of said town for the purpose of executing or delivering

for said defendant the said several supposed bonds and coupons in said complaint mentioned, or any or either of them, in any way or for any cause or purpose whatsoever, nor had they, or any or either of them, any power or authority in any way, or for any cause or purpose whatsoever, to execute or deliver for said town the said several supposed bonds and coupons in said complaint mentioned, or any or either of them.

Ninth. And for a further and ninth defence and answer herein this defendant says that the said plaintiff ought not to have or maintain this action against this defendant, because, it says, that the first installment of interest secured and agreed to be paid in and by said supposed
247 bonds in said complaint mentioned, and on each and every one of them, is made payable within a term less than six months from the date of them and each of them, to wit, within the term of one month and ten days from the date of them and each of them, and that the interest secured to be paid in and by said bonds, and each of them, exceeds the sum of seven per cent. per annum.

Tenth. And for a further and tenth defence and answer herein the said defendant says that the said plaintiff ought not to have or maintain this action against this defendant, because, it says, that the said several supposed bonds and coupons in said complaint mentioned were not, nor were any or either of them, ever executed or delivered for any money borrowed or agreed to be borrowed on the faith and credit of the said town of Scipio, but on the contrary thereof, this defendant says that the said supposed bonds and coupons, and each and every one of them, were delivered to the said Lake Ontario, Auburn and New York Railroad Company, mentioned and referred to in said complaint, for stock in said railroad, and not for money borrowed, or agreed to
248 be borrowed, and which was the first delivery and negotiation of said bonds and coupons in any way or for any cause or purpose whatsoever, and that such negotiation and delivery was without authority and unauthorized, and was and is illegal and void and in violation of the requirements and conditions of the said act of the legislature of the State of New York above mentioned and referred to, and that from and after that time the same remained in the sole and only possession and control of the said railroad company or its assignees, the said town nor any officers thereof never having repossessed itself or themselves of the same in any way or for any cause whatsoever, and that at the time when the said plaintiff became the supposed owner and holder and bearer of the said bonds and coupons there were by the terms thereof due and unpaid on the said alleged bonds, with said coupons which were attached to the same, a large sum of money, to wit, twenty-five thousand dollars of principal, it being the whole of such principal, and a large sum for interest, amounting to several thousand dollars, then due and unpaid on said bonds and coupons, and that the said
249 plaintiff, when he became such supposed owner, holder, and bearer of said bonds and coupons, well knew that such principal and interest was due and unpaid on the same respectively, and that the said plaintiff became such supposed owner, holder, and bearer of such supposed bonds and coupons respectively not in the ordinary course of business and without such knowledge as aforesaid, and without paying a bona-fide and valuable consideration for the same, and with full knowledge of the original delivery of the same to the said railroad company as aforesaid, and that the said plaintiff is not a bona-fide owner, holder, and bearer of them, or any or either of them, for a valuable consideration paid by him and in the ordinary course of business.

Wherefore the said defendant demands judgment herein, and that

the said plaintiff's complaint or declaration herein be dismissed with costs, &c.

S. EDWIN DAY,
Def't's Att'y, Moravia, N. Y.

United States district court, northern district of New York.

WILLIAM P. WRIGHT }
ag'st
THE TOWN OF SCIPIO. }

250 UNITED STATES OF AMERICA,
Northern District of New York,
State of New York, Cayuga County, ss:

Isaac Jump, of the town of Scipio, in said county, being duly sworn, deposes and says that he is the supervisor of said town of Scipio, and that he has fully and fairly stated this case and the grounds of the defendant's defence herein to S. Edwin Day, of Moravia, in said county, and one of defendant's counsel herein, and that the said defendant has a good and substantial defence on the merits in this action, as he is advised by said counsel and verily believes to be true.

ISAAC JUMP.

Sworn and subscribed to before me this 13th day of October, 1874.
CHARLES L. ADAMS,
U. S. Commissioner in & for Northern Dist. of N. Y.

I hereby certify that I have advised Isaac Jump above named that the above-named defendant has a good and substantial defence on the merits in said action as stated in the above affidavit of the said Isaac Jump.

251 And I further certify that the above and foregoing answers and pleas, and each and every one of them, are, in my opinion, well founded.

Dated Moravia, Oct. 14th, 1874.

S. EDWIN DAY,
Attorney & Counsel for said Defendant, The Town of Scipio.

252 (Indorsed:) U. S. D. C., N. D. of N. Y. William P. Wright ag'st The Town of Scipio. Answer. S. Edwin Day, def't's att'y, Moravia, N. Y.

You will please take notice that I have been retained by the above-named defendants, as its attorney, to defend this suit, and that my appearance as such has been duly entered with the clerk of the circuit court of the United States for the northern district of New York, at Utica, and that the within is a copy of the defendant's answer as filed with said clerk.

Dated Moravia, N. Y., Oct. 14th, 1874.

Yours, &c.,

S. EDWIN DAY,
Def't's Att'y.

To DAVID WRIGHT, Esq.,
Pl'ff's Att'y, Auburn, N. Y.

Filed Oct. 15th, 1874.

253 At a stated term of the circuit court of the United States of America for the northern district of New York, in the second circuit, held at the city-hall, in the city of Albany, on Saturday, the 16th day of October, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the honorable William J. Wallace, judge.

David Wright.
WILLIAM P. WRIGHT }
vs.
THE TOWN OF SCIPIO. }
H. L. Comstock & S. E. Day.

On motion of David Wright, plaintiff's attorney, ordered that a jury be empannelled, and that the trial of this cause do now proceed.

Whereupon the following-named jurors were called and sworn :

Arthur Hughes.	John I. S. Visscher.
William J. Teaver.	John Barton.
Philip O'Bryne.	David Foohey.
George Stewart.	W. G. Bender.
Edward B. Mitchell.	William N. Adams.
Asa Wygant.	Patrick McGrath.

254 Mr. Wright opens case for plaintiff.

Plaintiff's witnesses sworn : Lyman C. Comstock, Calvin Tracy.

Court takes a recess until 3½ o'clock p. m.

255 3½ O'CLOCK P. M.

Court met.

Present, Hon. William J. Wallace, judge.

WILLIAM P. WRIGHT }
vs.
THE TOWN OF SCIPIO. }

Jury called; 12 answer.

Trial continued.

Plaintiff's witness, Calvin Tracy, recalled.

Pl'ffs rests.

Mr. Comstock opens case for defendant.

Defendant's witness, David Wright.

Court direct' the jury to render a verdict for the plaintiff for $40,402.00.

The jury here, under direction of the court, answer and say they find a verdict for the plaintiff for $40,402.00.

Defendant's counsel moves for a new trial.

Court reserves case for further consideration.

Ordered stay of proceedings until the decision of the motion for a new trial.

256

257 At a term of the United States circuit court for the northern district of New York, held at the city of Albany, commencing on the second Monday of October, 1875.

WILLIAM B. WRIGHT
vs.
THE TOWN OF SICPIO.

This case having been tried and a verdict ordered for the plaintiff for the sum of forty thousand four hundred and two dollars, and the questions of law arising upon the trial having been reserved by this court for further consideration, and proceedings in the mean time upon the verdict stayed, and counsel for the respective parties having been heard, on motion of Mr. Wright, of counsel for plaintiff, ordered, that plaintiff have judgment upon said verdict.

It is further ordered that defendant have thirty days in which to make and serve a bill of exceptions herein, and in the mean time entry of judgment is stayed.

WM. J. WALLACE,
U. S. District Judge.

258 (Indorsed:) U. S. circuit court. William P. Wright vs. The Town of Scipio. Order. Filed July 11, 1876.

259 C. C. U. S. N. D. of N. Y.

WILLIAM P. WRIGHT
ag'st
THE TOWN OF SCIPIO.

The issues in this action having been brought on for trial before the honorable William J. Wallace, district judge of the United States for the northern district of New York and a jury at a circuit court of the United States held in and for the northern district of New York, at the court room in the city of Albany, in said district, on the sixteenth day of October last, and the said issues having then and there been tried, and a verdict for the plaintiff and against the defendant having been duly rendered by said jury on the said sixteenth day of October, 1875, for forty thousand four hundred and two dollars;

And a motion for a new trial having thereupon been made upon the judge's minutes and the same having been denied, and judgment thereupon having been ordered by the court in accordance with said verdict for the said sum of forty thousand four hundred and two dollars, together with interest thereon from the said day when said verdict
260, 261 was rendered, and the costs of plaintiff's to be taxed ,
and said costs having been taxed, including such interest, at the sum of $2,855.21:

Now, on motion of David Wright, attorney and of counsel for said plaintiff, it is adjudged that said plaintiff recover of said defendant the said sum of forty thousand four hundred and two dollars, so as aforesaid found by said jury, together with the said sum of two thousand eight hundred and fifty-five dollars and twenty-one cents for interest and costs so as aforesaid taxed, making, in the aggregate, the sum of forty-three thousand and two hundred and fifty-seven dollars and twenty-one cents.

Judgment signed this 28th day of September, 1876.

CHARLES MASON, *Clerk.*

262 (Indorsed:) U. S. circuit court, north. dist. of N. Y. William P. Wright vs. The Town of Scipio. Copy. Judgment roll. David Wright, pl'ff's att'y. Damages, $40,402.00; costs, 2,855.21—$43,257.21. Filed September 28, 1876, 4 o'clock p. m.

263 *Bill of exceptions on the part of the plaintiff.*

C. C. U. S. N. D. of N. Y.

WILLIAM P. WRIGHT }
vs.
THE TOWN OF SCIPIO. }

Afterwards, to wit, at a circuit court held at the United States court room, in the city of Albany, in and for the second circuit and northern district of New York, in the State of New York, on the sixteenth day of October, one thousand eight hundred and seventy-five, by and before the honorable William J. Wallace, district judge of said district, holding said circuit, came the parties aforesaid, by their attornies aforesaid, and also by their respective counsel, and the issues thus joined came on to be tried by and before said judge and a jury, and the said plaintiff, to maintain the said issues on his part, read and introduced in evidence an act of the legislature of the State of New York, passed April 16, 1852, three-fifths of the members elected to said legislature being present upon the passage of said act, entitled, "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah railroad," which, by consent of the counsel for the respective parties, was read from the printed copy of said act, contained in the printed volume of the laws of the State of New York passed by the legislature in the year 1852.

264 The plaintiff then proved that Thomas Squyers and Valson Smith were two of the assessors of said town of Scipio from the first day of March, 1852, to the first day of March, 1853. That William Taber was the supervisor of said town and Calvin Tracy and George Slocum were the railroad commissioners of said town from the first day of March, 1853, to the first day of March, 1854, having been duly elected to those offices at the annual town meeting held in and for said town on the said first day of March, 1853.

That a railroad company, by the name and style of the Lake Ontario, Auburn and New York Railroad Company, was duly organized according to the requirements of the general railroad law of the State of New York, passed April 2, 1850, for the purpose of grading, constructing and maintaining a railroad from Lake Ontario to the Cayuga and Susquehannah Railroad, passing through the city of Auburn and the towns of Scipio, Venice and Genoa, in the county of Cayuga; the articles of association of said railroad company having been filed and recorded in the office of the secretary of state of said State of New York on the 23d day of August, 1852.

That prior to the 8th day of December, 1852, the supervisors and assessors of said town of Scipio had procured the signatures of three hundred and one of the resident persons taxed in said town, appearing on the assessment-roll of said town for the year 1852, to a writ-

265 ten assent, of which the following is a copy, to wit:

"We, the undersigned, resident tax payers of the town of Scipio, in the county of Cayuga, do hereby consent that the supervisor and assessors of said town may borrow, on the faith and credit of said town, such a sum of money as they may deem necessary, not exceeding twenty-five thousand dollars, for a term not exceeding twenty years, at such rate of interest as may be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a

bond or bonds, in which the interest shall be made payable annually or semi-annually during the term said money may be borrowed, and the principal and interest be made payable in such sums and at such times and places as shall be agreed upon and expressed in the bonds to be executed, and that the monies so borrowed may be paid to the president and directors of a railroad company organized according to the requirements of the general railroad law for the purpose of constructing a railroad connecting Lake Ontario with the Susquehannah and Cayuga Railroad, and passing through the city of Auburn, upon the stock of said railroad company to be subscribed for and taken by said supervisor and assessors in the name of and for said town."

That endorsed upon said assent or writing was an affidavit, of which the following is a copy, to wit:

STATE OF NEW YORK,
Cayuga County, ss:

We, two of the assessors of the town of Scipio, being duly
266 sworn, depose and say that the persons whose written assents are hereto attached comprize two-thirds of all resident tax-payers of said town of Scipio on the assessment-roll thereof, made and prepared by the assessors of said town for the year one thousand eight hundred and fifty-two.

(Signed) THOMAS T. SQUYERS,
VALSON SMITH.

Sworn before me this 8th day of December, 1852.

(Signed) NATHANIEL WELLER,
Justice of the Peace, Cayuga County.

That said assents, with said three hundred and one signatures thereto signed, together with said affi lavit thereon endorsed, were duly filed by said supervisor and assessors in the clerk's office of Cayuga County on the 11th day of January, 1853.

That afterwards, and on the first day of March, 1853, William Taber was duly elected at the town meeting held on that day, in and for said town, as the supervisor thereof, and Calvin Tracy and George Slocum were on the same day and at the same town meeting duly elected railroad commissioners of said town.

That afterwards, and on the 16th day of May, 1853, the said supervisor and railroad commissioners, in the name and in behalf of and for said town, subscribed in the books of subscription of said railroad company for five hundred shares of the capital stock of said railroad company, each share being for fifty dollars.

That on the 20th day of May, 1853, the said William Taber and said Calvin Tracy and George Slocum as such supervisor and railroad
267 commissioners, executed, under their official signatures, twenty-five bonds, with interest coupons annexed, of one of which said bonds the following is a copy, to wit:

Seven per cent. loan, not exceeding $25,000.

Be it known that the town of Scipio, in the county of Cayuga and State of New York, in pursuance of an act of the legislature of said State, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susque-

hannah Railroad," passed April 16, 1852, and for the purpose of aiding in the construction of the Lake Ontario, Auburn and New York Railroad, owes and promises to pay to Slocum Howland or bearer one thousand dollars, with interest at the rate of seven per cent., payable semi-annually, on the first days of January and July in each year, on surrender of the coupons hereto attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursable at the same place at the expiration of twenty years from the first day of January, 1853.

In testimony whereof the supervisor and commissioners of the town of Scipio have, pursuant to the provisions of the act aforesaid, and the written assent of two-thirds of the resident tax-payers of said town, obtained and filed in the office of the clerk of the county of Cayuga, hereunto subscribed their names this 20th day of May, A. D. 1853."

(Signed) WILLIAM TABER, *Supervisor.*
" CALVIN TRACY,
" GEORGE SLOCUM,
Commissioners.

268 And said bonds were duplicates, each of the others, except that they were severally numbered from one to twenty-five inclusive. That attached to each of said bonds, when presented upon said trial, were interest coupons, each for thirty-five dollars, each being for six months' interest upon the bond to which it was attached, and sufficient in number in the aggregate to include all the semi-annual instalments of interest which would accrue upon said bonds from the first day of July, 1857, to the time when said bonds would mature, and each being the counterpart of every other, except the time when payable and the number of the bond to which it was attached, and the first coupon attached to said bonds, as appeared thereto attached when presented upon the trial, was payable on the first day of January, 1858, and of one of said coupons the following is a copy, to wit:

$35.]

The town of Scipio, in the county of Cayuga, hereby acknowledges that there will be due the bearer thirty-five dollars, payable at the Bank of the State of New York, in the city of New York, on the first day of January, 1858, being interest due on that day on bond No. 1.

(Signed) WILLIAM TABER, *Supervisor.*
" CALVIN TRACY,
" GEORGE SLOCUM,
Commissioners.

269 That afterwards one Slocum Howland, a resident of the town of Scipio, became the bona fide owner and holder of all of said bonds, and continued to hold and own the same until he sold and delivered the same to the plaintiff in this action, in September, 1874. That the interest as the same became due and payable, as expressed in the coupons thereto attached, up to and including the semi-annual interest which became due and payable on the first day of July, 1857, was paid to him, the said Slocum Howland, and that no interest had been payed which had accrued subsequent to that time.

That said bonds, with all the coupons attached remaining unpaid, had been sold and delivered by said Howland to the plaintiff in this suit, who was a resident of Mt. Royal, in the State of Florida. And after the foregoing proofs had been made and given on behalf of the plaintiff before said court and jury, the said court then and there charged said

jury that the six years' statute of limitation of the said State of New York was applicable to the plaintiff's claim for interest upon said bonds, and that the said plaintiff was barred thereby from the recovery of any interest which had accrued upon said bonds prior to six years before the commencement of this action, and that the said plaintiff was entitled to recover only the principal expressed in said bonds, together with simple interest thereon from the time the last coupon became payable, together with the aggregate amount expressed in all the coupons which had become payable within six years next prior to the commencement of this action, with interest upon each of said several last
270 mentioned coupons from the time it became due and payable; whereupon the counsel for plaintiff then and there and in the presence of said jury, and before they had retired from said court to deliberate upon their verdict, in due time and form excepted to the said charge of said court, as given to said jury, and at the same time then and there requested said court to charge said jury that the plaintiff was entitled to recover the principal money expressed in said bonds, together with simple interest at the rate of seven per cent. per annum, to be cast from the said first day of July, 1857. But said court then and there refused to charge said jury as thus requested on behalf of said plaintiff, to which refusal of said court to charge said jury as thus requested on behalf of said plaintiff the said counsel for the said plaintiff then and there in due time and form excepted, and said exception to said charge as given, and to said refusal to charge as requested, was then and there noted by said court.

And thereupon the said jury, without leaving the presence of said court, under and in accordance with the said charge of said court as given to them, rendered their verdict in favor of the plaintiff and against the defendant for forty thousand four hundred and two dollars damages and six cents costs.

And inasmuch as neither the said several matters so produced,
271 proven, and given in evidence on the part of said plaintiff, nor the said charge of said court to said jury, nor the objection nor exception thereto as made and insisted upon by the said counsel for said plaintiff, nor the request so as aforesaid made by said counsel to said court to charge said jury, nor the objection of said counsel to the refusal of said court to charge said jury as thus requested by said counsel, do appear by the record of the verdict aforesaid, the said counsel for said plaintiff did then and there propose the aforesaid exceptions to the said charge of said judge to said jury, and also to the refusal of said judge to charge as requested by said counsel to said judge, and requested him to put his seal and to sign this bill of exceptions, containing the said several matters aforesaid, according to the form of the statute and the rules and practice of this court.

And thereupon the said judge, at the request of the said counsel for said plaintiff, did sign this bill of exceptions, on the 27th day of September, one thousand eight hundred and seventy-six.

WM. J. WALLACE,
U. S. Dist. Judge.

D. WRIGHT,
Plaintiff's Attorney.

272 (Indorsed:) C. C. U. S., N. D. of N. Y. William P. Wright vs. The Town of Scipio. Bill of exceptions on behalf of pl'ff. D. Wright, pl'ff's att'y. Filed Sep. 28, 1876, & before judgment entered.

273 *Bill of exceptions on behalf of defendant.*

Circuit court of the United States, second circuit, northern district of New York.

WILLIAM P. WRIGHT
against
THE TOWN OF SCIPIO.

Afterwards, to wit, at a circuit court held at the United States court room in the city of Albany, in and for the northern district of New York, in the State of New York, on the sixteenth day of October, one thousand eight hundred and seventy-five, by and before the Hon. William J. Wallace, district judge of said district, holding said circuit court, came the parties aforesaid by their attorneys aforesaid, and also by their respective counsel, and the issues thus joined came on to be tried by and before said judge and a jury; and the said plaintiff, in order to maintain the issues on his part, read and introduced in evidence an act of the legislature of the State of New York, passed April 16, 1852, three-fifths of the members elected to said legislature being present upon the passage thereof, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad"; which, by the consent of the counsel for the respective parties, was read from the printed copy of said act contained in the printed volume of the laws of the State of New York passed by the leg-
274 islature in the year 1852.

The plaintiff then proved that a railroad company under the name and style of "The Lake Ontario, Auburn and New York Railroad Company," was duly organized according to the requirements of the general railroad law of the State of New York, passed April 2, 1850, for the purpose of grading, constructing, and maintaining a railroad from Lake Ontario to the Cayuga and Susquehannah Railroad, passing through the city of Auburn and the towns of Scipio, Venice, and Genoa, in the county of Cayuga, the articles of association of said railroad company having been filed and recorded in the office of the secretary of state of the State of New York on the 23d day of August, 1852.

The said plaintiff then produced in evidence a stipulation in the words and figures following:

C. C. U. S., N. D. of N. Y.

WILLIAM P. WRIGHT
against
THE TOWN OF SCIPIO.

It is hereby stipulated and agreed that the following admissions shall be made upon the trial of this action, subject however to the same objections and exceptions as if the same were offered to be proved by competent evidence:

First. That Thomas Squyers and Valson Smith were two of the assessors of the said town of Scipio from the first day of March, 1852, to the first day of March, 1853.

275 Second. That William Taber was the supervisor of said town, and Calvin Tracy and George Slocum were the railroad commis-

sioners of said town, from the first day of March, 1853, to the first day of March, 1854, having been duly elected to these offices at the annual town meeting held in said town upon the said first day of March, 1853.

Oct. 5, 1875. S. E. DAY,
Def't's Att'y.

One LYMAN C. COMSTOCK was then called as a witness for the plaintiff, who, being duly sworn, testified as follows:

I am clerk of Cayuga County.

Question by plaintiff's attorney. Have you with you from the files of that office the assents and affidavits filed in the case of the town of Scipio?

Answer. I have.

(By plaintiff's attorney.) Produce them.

The witness here produced three several paper writings, all being alike and in the same words and figures, except the signatures subscribed thereto, and each having same signatures subscribed thereto, each and every of which paper writing is in the words and figures following, excepting and omitting the signatures subscribed thereto, to wit:

"We, the undersigned, resident tax-payers of the town of Scipio, in the county of Cayuga, do hereby consent that the supervisors and assessors of said town may borrow on the faith and credit of said town such a sum of money as they may deem necessary, not exceeding twenty-five thousand dollars, for a term not exceeding twenty years, at such
276 rate of interest as may be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds, in which the interest shall be made payable annually or semi-annually, during the term said money may be borrowed, and the principal and interest made payable in such sums, and at such times and places, as shall be agreed upon and expressed in the bonds to be executed, and that the money so borrowed may be paid to the president and directors of a railroad company, organized according to the requirements of the general railroad law, for the purpose of constructing a railroad connecting Lake Ontario with the Susquehanna and Cayuga Railroad, and passing through the city of Auburn, upon the stock of said railroad company, to be subscribed for and taken by said supervisor and assessors in the name of and for said town."

Accompanying and thereto annexed was the affidavit of Thomas T. Squyers and Valson Smith, in the words and figures following:

STATE OF NEW YORK,
Cayuga County, ss:

We, two of the assessors of the town of Scipio, being duly sworn, depose and say that the persons whose written assents are hereto attached comprise two-thirds of all resident tax-payers of said town of Scipio, on the assessment roll thereof, made and prepared by the assess-
277 ors of said town for the year one thousand eight hundred and fifty-two.

THOMAS T. SQUYERS.
VALSON SMITH.

Sworn before me this 8th day of December, 1852.

NATHANIEL WELLER,
Justice of the Peace, Cayuga County.

And the counsel for said plaintiff then offered to read said alleged assents in evidence, and to which the counsel for the defendant objected on each of the following grounds, to wit:

First. That the said alleged tax-payers have not named, nor in any manner designated or expressed in said alleged written assents, the "Lake Ontario, Auburn and New York Railroad Company" as the railroad company to whose directors the money to be borrowed under the act by virtue of or pursuant to which said assents were given should be paid.

Second. That the signatures to said assents have not been proved, nor is it in any manner proved that two-thirds of the resident tax-payers of said town of Scipio, on its assessment roll next previous to the filing of said alleged written assents, ever subscribed their names to said alleged written assents.

Third. That the burden is upon the plaintiff to prove affirmatively that two-thirds of all the resident taxpayers of said town of Scipio, as appearing on its assessment roll made next previous to the filing of said written assents, in fact subscribed their names to said alleged written assents.

278 Fourth. That the affidavit annexed to said written assents does not prove the genuineness of the signatures to said alleged written assents, nor that two-thirds of the resident taxpayers of said town of Scipio appearing on its assessment roll made next previous to the filing thereof subscribed the same.

Fifth. That it is not proved that two-thirds of the resident persons taxed in said town, as appearing on the assessment roll of such town, made next previous to the time of the alleged borrowing of money pursuant to said act, subscribed their names to said alleged written assents.

His honor the judge overruled said objections, and each and every of them separately, and to which rulings and decisions, and to each and every of them separately, the counsel for the defendant excepted, and the same were then and there duly noted by the court.

The counsel for the plaintiff then offered to read said affidavits of said Thomas T. Squyers and said Valson Smith in evidence, and to which the counsel for the defendant then and there objected, upon the following grounds, to wit:

First. That said affidavit does not prove the genuineness of the signatures to said alleged written assents, nor that two-thirds of the resident taxpayers of said town subscribed their names to said alleged written assents.

279 Second. That said affidavit is not drawn in conformity with the statute in question, inasmuch as it does not contain the word "filed," the said statute requiring that said affidavit shall be to the effect that the persons whose written assents are thereto attached and filed comprise two-thirds of all the resident tax-payers of said town, on its assessment-roll made next previous thereto.

Third. That the statute does not make the affidavit of the assessors evidence of the genuineness of the signatures of tax-payers.

His honor the judge overruled said objections and each and every of them separately, and to which rulings and decisions, and to each and every of them separately, the defendant then and there excepted, and the same were then and there duly noted by the court.

(By the witness.) I have counted the number of signatures. There are three hundred and one in all; and the assents together with the said signatures thereto signed; and said affidavits were filed by said super-

visor and assessors in Cayuga County clerk's office on the 11th day of January, 1853.

The counsel for the plaintiff then read in evidence the said alleged assents and said affidavits.

On his cross-examination, the witness testified:

I have with me the duplicates of the bonds in suit.

280 The counsel for the plaintiff then called one CALVIN TRACY as a witness for the plaintiff, who, being first duly sworn, testified as follows:

I was one of the railroad commissioners of the town of Scipio in the year 1853.

A book, purporting to be the original book of subscriptions of the Lake Ontario, Auburn and New York Railroad Company, was here shown the witness, and on a certain page thereof were the words and figures following:

Book of subscriptions to the capital stock of the Lake Ontario, Auburn and New York Railroad Company, formed under and in pursuance of the provisions of an act of the legislature of the State of New York, entitled "An act to authorize the formation of railroad corporations, and to regulate the same," passed April 2, 1850.

We, the subscribers, severally agree to take the number of shares of stock set opposite to our respective names in the above-named company, under the act aforesaid, and to be subject to the provisions of that act and of the laws of the State of New York in relation to railroad corporations.

Date.	Subscribers' names.	Place of residence.	Number of shares we agree to to take.
1853. May 16	Town of Scipio, by Calvin King, supervisor; Isaac Smith, Jonas Wood, commissioners.	Scipio.	Five hundred shares. Par value, $50 per share.

281 The witness further testified:

I saw this signed by the supervisor and commissioners of the town of Scipio. Its date is May 16, 1853. I was present when this was done.

The counsel for the plaintiff here offered to read in evidence the said alleged subscription of the town of Scipio to the capital stock of said railroad company, to which the counsel for the defendant objected, on the ground that the plaintiff had proved no right or authority of the supervisor and alleged commissioners of the town of Scipio to subscribe for any stock or issue any bonds in the name of or for the defendant.

His honor the judge overruled the objection, to which ruling the counsel for the defendant then and there excepted, which exception was then and there duly noted by the court, and the alleged subscription was read in evidence.

The counsel for the plaintiff then offered to read in evidence twenty-five alleged bonds, each for the sum of one thousand dollars, all being alike, except as to their number, and numbered from one to twenty-five, both inclusive, and also except that eight of them, being those numbered from one to eight, both inclusive, are payable to Slocum Howland

or bearer, and the residue, being those numbered from nine to twenty-five, both inclusive, are payable to bearer, no payee being named therein, and to which were annexed coupons for the sum of thirty-
282 five dollars each, all being alike except as to the time when payable, their being one coupon for each instalment of semi-annual interest on each bond, the first being due July 1, 1858, and the last being due January 1, 1873, and to which alleged bonds and coupons the signatures of William Taber and of Calvin Tracy and George Slocum subscribed thereto were by the defendant admitted to be genuine, said bonds and coupons being the same alleged bonds and coupons mentioned in the complaint, and one of which bonds (No. 2) is in the words and figures following, viz:

No. 2.] STATE OF NEW YORK, COUNTY OF CAYUGA. [$1,000.

Seven per cent. loan, not exceeding $25,000.

One thousand dollars.

Be it known that the town of Scipio, in the county of Cayuga and State of New York, in pursuance of an act of the legislature of said State, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," passed April 16, 1852, and for the purpose of aiding the construction of the Lake Ontario, Auburn and New York Railroad, owes and promises to pay to Slocum Howlands or bearer one thousand dollars, with interest at the
283 rate of seven per cent., payable semi-annually on the first days of January and July in each year, on surrender of the coupons hereto attached, at the Bank of the State of New York, in the city of New York, the principal to be reimbursable at the same place at the expiration of twenty years from the first day of January, 1853.

In testimony whereof the supervisor and commissioners of the town of Scipio have, pursuant to the provisions of the act aforesaid, and the written assent of two-thirds of the resident tax-payers of said town, obtained and filed in the office of the clerk of the county of Cayuga, hereunto subscribed their names this 20th day of May, A. D. 1853.

WILLIAM TABER,
Supervisor.
CALVIN TRACY,
GEORGE SLOCUM,
Commissioners.

One of the coupons annexed to said alleged bond number two is in the words and figures following:

$35.]

The town of Scipio, in the county of Cayuga, hereby acknowledges that there will be due the bearer thirty-five dollars, payable at the Bank of the State of New York, in the city of New York, on the first day of July, 1858, being interest due on that day on bond No. 2.

WILLIAM TRACY,
Supervisor.
CALVIN TRACY,
GEORGE SLOCUM,
Commissioners.

284 Defendant's counsel objected to the reading of said alleged bonds, and each of them, and of said coupons, and each of them, in evidence, then and there, on the following ground: Because it is not proved that the signatures to said alleged written assents of two-thirds of the resident tax-payers of said town, appearing on its assessment-roll made next previous to the time of the alleged borrowing of the money, pursuant to said act, are genuine.

His honor the judge overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there duly noted by the court.

The defendant's counsel also then and there objected to the reading of said several alleged bonds and coupons in evidence, on the ground that it is not proved that two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of said town, made next previous to the time of the alleged borrowing of money, subscribed their names to said written assents, but his honor the judge overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there duly noted by the court.

The counsel for the defendant then and there also objected to the reading of said several alleged bonds and coupons in evidence,
285 upon the further ground that it is not proved that two-thirds of the resident persons taxed in said town, as appearing upon its assessment-roll for the year 1852, subscribed their names to said alleged written assents.

His honor the judge overruled said objection, to which ruling and decision the counsel for the defendant then and there excepted, and the same was then and there duly noted by the court.

The counsel for the defendant also then and there objected to the reading of said several alleged bonds and coupons in evidence, upon the following ground: Because it is not proved that two-thirds of the resident persons taxed in said town, as appearing upon its assessment-roll for the year 1853, subscribed their names to said alleged written assents.

His honor the judge overruled said objection, to which ruling and decision the counsel for the defendant excepted, and the same was then and there duly noted by the court.

The counsel for the defendant then and there objected to the reading of said several alleged bonds and coupons in evidence, upon the following ground: Because it is not proved that the said supervisor and commissioners, or any or either of them, borrowed any money pursuant to the said act of the legislature first mentioned and referred to in the plaintiff's complaint or declaration, nor that said alleged bonds or coupons, or any or either of them, were issued for borrowed money.

286 His honor the judge overruled said objection, to which ruling and decision the counsel for the defendant then and there duly excepted, and the exception was duly noted by the court then and there.

The counsel for the defendant also then and there objected to the reading of said several alleged bonds and coupons in evidence, upon the following ground: Because the said alleged tax-payers have not named nor in any manner designated or expressed in said alleged written assents "The Lake Ontairo, Auburn and New York Railroad Company" as the railroad company to whose directors the money to be borrowed under the said act of the legislature first mentioned and referred to in the plaintiff's complaint or declaration should be paid.

The counsel for the defendant also then and there objected to reading

in evidence those of said bonds from number nine to number twenty-five, both inclusive, and to each of them, and to the coupons thereto annexed, and to each of them, on the ground that it appears that they were not issued until after said alleged assents had become inoperative by the making, completion and filing of a new assessment-roll of said town,
287 after such assents were filed, and he then and there read in evidence the certificate of Edwin B. Marvin, then clerk of said county of Cayuga, which appeared on the face of each of said last-mentioned bonds, and which was in the words and figures following:

CAYUGA COUNTY,
Clerk's Office, ss:

I, Edwin B. Marvin, clerk of the county of Cayuga, hereby certify that a paper purporting to be the written assent of two-thirds of the resident tax-payers of the town of Scipio, with the affidavit required by section 1 of the act referred to by its title in the foregoing bond, has been filed in this office.

Dated 7th January, 1854.

EDWIN B. MARVIN,
Clerk of Cayuga County.

But his honor the judge overruled said objections, and to which ruling and decision the counsel for the defendant then and there duly excepted, and such exception was then and there duly noted by the court.

The said several objections to the reading of the said several alleged bonds and coupons in evidence having been overruled, and exceptions taken as aforesaid, the counsel for the plaintiff then read the said alleged bonds and coupons in evidence.

The witness further testified as follows:

I continued to act as commissioner until the fore part of April,
288 1857, and George Slocum acted as one of the commissioners during the same time. He is dead.

The counsel for the plaintiff then put the following question to the witness: Did the town get its scrip?

The counsel for the defendant in due time objected to the question, on the ground that the answer would be incompetent and immaterial, and because the scrip itself was the best evidence.

His honor the judge overruled the objection, to which ruling and decision the counsel for the defendant then and there excepted, and the exception was duly noted by the court.

The witness answered: Yes, and I passed it to the supervisor of the town.

The counsel for the plaintiff then asked the witness the following question: Was the interest paid upon these bonds?

To this question the counsel for the defendant duly objected that it does not appear that the fact is within the personal knowledge of the witness, and, if paid, the act would not be binding upon the town nor affect her rights unless done and proven to be done by virtue of and pursuant to the provisions of the statute under which the said alleged bonds were issued, and of which there is no proof, and as incompetent and immaterial.

His honor the judge overruled said objection, to which ruling and decision the counsel for the defendant excepted, and the exception was then and there duly noted by the court.

289 Thereupon the witness testified:

Three years interest was paid. We paid to July 1st, 1857. We paid the coupon of that date. It was paid to Mr. Slocum Howland. The supervisor and I paid it. We received the money from the county treasurer. Mr. Howland had the bonds. We took up the coupons.

Being cross-examined by counsel for the defendant, the witness testified:

I paid this money to Mr. Howland. He then held these bonds.

The counsel for the plaintiff then stated that he had computed the interest on the bonds, and that if the interest should be cast upon the bonds at seven per cent. simple interest from the first day of July, 1857, to the time of trial, there would then be due thereon, in the aggregate, for principal and interest, the sum of fifty-seven thousand and ten dollars and twenty-five cents, but if the six years' statute of limitations should be held to bar all interest not accruing within six years from the time of the commencement of this action, then there would be due upon the bonds and coupons, for principal and interest, the sum of forty thousand four hundred and two dollars, and his calculation was admitted to be correct by the defendant.

The plaintiff here rested.

Thereupon the counsel for the defendant, to maintain the issues on its part, read in evidence a stipulation between the attorneys for said
290 respective parties, in the words and figures following:

U. S. C. C., N. D. of N. Y.

WILLIAM P. WRIGHT }
ag'st
THE TOWN OF SCIPIO. }

It shall be admitted on the trial of this action that Slocum Howland purchased seventeen of the bonds mentioned in the complaint or declaration from the Lake Ontario, Auburn and New York Railroad Company, after the 7th day of January, 1854, with the coupons annexed thereto for the interest which should accrue from and after January 1, 1854, and not for any interest which had accrued or should accrue prior to that day, and that said Slocum Howland at the time he so purchased said bonds and coupons had notice that the said seventeen bonds had not been transferred to said Lake Ontario, Auburn and New York Railroad Company, nor to any person or corporation, for money borrowed by the supervisor and commissioners of the defendant, or one or more of them, in the first instance, but had been transferred by said supervisor and commissioners, or one or more of them, in the first instance, directly to said railroad company in exchange for stock of that company; that thenceforward and up to September, 1874, said Slocum Howland
291 remained the holder and owner of said bonds, and that said seventeen bonds were by said supervisor and commissioners, or one or more of them, on the said 7th day of January, 1854, transferred to said railroad company in exchange for stock of said company, and not for money borrowed in the first instance, at which time said bonds had their inception, and of all of which facts said Slocum Howland had notice at the time he purchased said bonds of said company as aforesaid.

Dated Oct. 13th, 1875.

D. WRIGHT,
Pl'ff's Att'y.
S. E. DAY,
Def't's Att'y.

It was admitted by the attorneys for the respective parties that the action was commenced on the seventh day of December, 1874. It was likewise admitted in open court that the plaintiff resides at Mt. Royal, Florida, and did reside there at the time of the commencement of this action.

It was also admitted by said attorneys at the same time that it was bonds number 9 to 25, both inclusive, which were transferred directly to said railroad company in the first instance, not for money borrowed, and which were transferred by said railroad company to said Slocum Howland, as mentioned in said stipulation read by the counsel for the defendant as aforesaid.

292 The witness Calvin Tracy being still upon the witness-stand, he was further examined by the counsel for the defendant, as follows:

Question. When were bonds number one, two, and three transferred and delivered to Mr. Slocum Howland?

And the witness answered:

I presume it was the day the clerk's certificate on them bears date. I think these three were transferred to Slocum Howland on the 25th day of May, 1853. We received $2,500 from him then.

Question. Look at bonds No. 4 and 5. When were they transferred and delivered to Mr. Slocum Howland?

Answer. I think the 13th day of August, 1853, was the day on which we let Mr. Slocum Howland have them. We received $2,500 at that time from him, and that made $5,000 for the five bonds.

Question. Look at bonds No. 6, 7, and 8. When were they transferred and delivered to Mr. Slocum Howland?

Answer. I think we sold them on the 23d day of September, 1853, and we got $2,500.

Question. Were you present when the other 17 bonds were issued?

293 Answer. No. I delivered those to George Slocum, and told him to do what he chose with them. I was away from home when they were delivered. I think I was in Genesee County, in this State. I had nothing to do with making the agreement with the railroad company.

The counsel for the defendant here read in evidence a certain memorandum, the execution of which was admitted, and is in the words and figures following:

The Lake Ontario, Auburn and New York Railroad Company have received from the town of Scipio seventeen bonds of one thousand dollars each, being seventeen thousand dollars, at par, and have endorsed the scrip for five hundred shares, as full stock, with the understanding that the company may, at any time within eight months from the eleventh day of October, 1853, redeliver said bonds, or any part of them, to said town, or the railroad commissioners of said town, and reduce the amount of endorsement on scrip accordingly. If said company sell said bonds for more than par, they shall allow the said town for the amount of the premium. Said town may at any time within eight months aforesaid, and prior to the sale of said bonds by the company, have the right to demand the redelivery of said bonds upon payment to said company of the par value thereof.

January 5, 1854.

294 THOMAS T. HOW, JR.,
President.

GEORGE SLOCUM.
Railroad Com. Town of Scipio.

The witness Calvin Tracy further testified:

Seven thousand five hundred dollars were all I ever received from Slocum Howland for bonds No. 1 to 8 inclusive.

The counsel for the plaintiff here offered in evidence a paper writing purporting to be the original scrip issued on behalf of the said railroad company to said defendant, in the words and figures following:

THE LAKE ONTARIO, AUBURN AND NEW YORK RAILROAD CO.

No. 455.] Capital stock, $1,500,000. [Shares, $50.

Be it known that the town of Scipio is entitled to five hundred shares in the capital stock of the Lake Ontario, Auburn and New York Railroad Company, each share being fifty dollars, upon each share of which there has been paid the amount endorsed on the back of this certificate, subject to such future payments as may from time to time be required by the directors and the conditions of the articles of incorporation.

Said shares are transferrable on the book of said company, at the treasurer's office in the city of Auburn, by the supervisor and
295 commissioners of said town, or their attorney, on the surrender of this certificate.

In witness whereof the Lake Ontario, Auburn and New York Railroad Company have caused the signature of their treasurer to be hereto affixed, in the city of Auburn, this twenty-fifth day of May, 1853.

JOSHUA BURT, *Treasurer.*

(Across the face:) Full share.

And which paper ~~here~~ (bore) the following endorsement:

AUBURN, *May* 25, '53.

Rec'd twenty-five hundred dollars, 10 per cent. on the within.
$2,500. J. BURT, *Treas.*

AUBURN, *August 13th*, 1853.

Rec'd twenty-five hundred dollars, 10 per cent. on the within.
$2,500. THOMAS T. HOW, JR., *President*,
For J. BURT, *Treasurer.*

AUBURN, *Sept.* 23, 1853.

Received twenty-five hundred dollars, 10 per cent. on the within.
$2,500. J. BURT, *Treas.*

AUBURN, *January* 7, 1854.

Received seventeen thousand and five hundred dollars.
$17,500. J. BURT, *Treas.*
$25,000.

It was admitted by the counsel for the defendant that Thomas T. How, jr., was the president, and that Joshua Burt was the treas-
296 urer of said railroad company at the time the said scrip and the endorsements thereon bear date; that they were both dead, and that their signatures to said scrip and to the endorsements thereon were genuine, but to the reading thereof in evidence the counsel for the defendant duly objected on the ground of immateriality, and because the railroad commissioners had no power in the name of or for said town to subscribe to the capital stock of said railroad company, and as irrele-

vant, and that the endorsements are not evidence against the defendant.

His honor the judge overruled said objection; to which ruling and decision the counsel for the defendant then and there duly excepted, and the exception was then and there duly noted by the court.

Being further examined, the witness testified as follows:

I made the first three payments to the railroad company out of moneys received from Mr. Howland. I was not present when the $17,500 was paid. Mr. Slocum Howland lives in Scipio, and has lived there more than forty years.

DAVID WRIGHT, esq., the attorney and counsel for the plaintiff, was then called as a witness for the defendant, and, being first duly
297 sworn, testified as follows:

I am the plaintiff's father; I was present when these bonds in suit were sold to him; Mr. Slocum Howlands was also present; it was done in Auburn.

The following question was put to the witness by the counsel for the defendant:

What did your son pay for these bonds?

The witness objected to answering on the ground that it was a matter between lawyer and client, and as such privileged. The witness further testified:

The transaction was in writing; the bonds were delivered, and a note was given; the note was guaranteed by me; I have not the note; I am not willing to state the amount agreed to be paid; no money was paid then, no' has any been paid since; I think there was no agreement between them aside from the note.

The testimony was here closed.

The counsel for the defendant then and there requested the court to rule and decide that upon the proof in the action the plaintiff was not entitled to recover upon any of the said alleged bonds or coupons for the following reasons, viz:

Because the signatures to said alleged written assents of said alleged resident taxpayers of said town have not been proven, nor is it in
298 any manner proved that two-thirds of the resident persons taxed in said town of Scipio as appearing upon the assessment-roll of such town, made next previous to the time of the alleged borrowing of money and issuing of said bonds, had subscribed their names to said written assents, and because the plaintiff, in order to entitle him to recover, was bound to make such proof otherwise than by the affidavit annexed to said alleged written assents.

But his honor the judge declined to so rule and decide, and to such ruling and decision the counsel for the defendant then and there duly excepted, and the exception was then and there duly noted by the court.

The counsel for the defendant also then and there requested the court to rule and decide that the plaintiff was not entitled to recover upon said alleged bonds and coupons or any of them, because said alleged written assents of said alleged taxpayers of said town are void on their face, for the reason that they are not drawn in conformity with the statute first mentioned and referred to in the plaintiff's complaint or declaration, in that they do not name or in any manner designate the Lake Ontario, Auburn and New York Railroad Company, or any other particular railroad company as the railroad company, to whose direct-
299 ors the money to be borrowed, pursuant to said act, should be paid.

His honor the judge declined to so rule or decide; to which ruling and decision the counsel for the defendant then and there duly excepted, and the exception was then and there duly noted by the court.

The counsel for the defendant also then and there requested the court to rule and decide that upon the proof in the action the plaintiff was not entitled to recover on any of the said alleged bonds or coupons, because the said affidavit of the said Thomas T. Squyers and Valson Smith, annexed to said alleged written assents of said alleged tax-payers of said town, is not in conformity with the said act of the legislature first mentioned and referred to in the plaintiff's complaint or declaration, inasmuch as it does not contain the word "filed," the said statute requiring that the said affidavit shall be to the effect that the persons whose written assents are thereto attached and filed comprise two-thirds of all the resident tax-payers of said town on its assessment-roll made next previous thereto.

But his honor the judge declined to so rule and decide, and to such ruling and decision the counsel for the defendant then and there duly excepted, and the exception was then and there duly noted by the court.

300 The counsel for the defendant also then and there requested the court to rule and decide that upon the proofs in the action the plaintiff was not entitled to recover upon any of the said alleged bonds and coupons, because the recitals in the said alleged bonds, and in the testatum clause of said alleged bonds, are not evidence that the prior conditions required by the said act to the issuing of said bonds had been complied with. That the right, power, and authority of the said William Taber, Calvin Tracy, and George Slocum to execute said alleged bonds could not be proved by the recitals in said bonds, or in said testatum clause thereof, and if so, that such recitals are not sufficient for that purpose. But his honor the judge declined to so rule and decide, and to such ruling and decision the counsel for the defendant then and there duly excepted, and the exception was then and there duly noted by the court.

The counsel for the defendant also then and there requested the court to rule and decide that the plaintiff was not entitled to recover upon any of the said alleged bonds or coupons, because it does not appear that said bonds were issued or transferred for borrowed money. But his honor the judge declined to so rule and decide, and to such ruling

301 and decision, the counsel for the defendant then and there duly excepted, and the exception was then and there duly noted by the court.

The counsel for the defendant also then and there requested the court to rule and decide that the plaintiff was not entitled to recover upon the bonds numbered 4 to 25, both inclusive, or either of them, or upon the coupons thereto annexed, or upon either of them, because said alleged assent of said alleged tax-payers of said town had become inoperative before the said supervisor and commissioners issued said bonds, or any or either of them, and before they or any or either of them borrowed any money in pursuance of the said act of the legislature, said assents having been made with reference to the assessment-roll of said town for the year 1852; and the said supervisors and commissioners not having borrowed any money pursuant to said act, nor issued any of said bonds last aforesaid until after the first day of September, 1853, on or prior to which day another assessment-roll of said town for the year 1853 was made and completed, and the said act of the legislature required the written assents of two-thirds of the resident persons taxed in

said town, as appearing upon the assessment-roll of such town made next previous to the time such moneys may be borrowed. But
302 his honor the judge declined to so rule and decide, and to such ruling and decision the counsel for the defendant then and there duly excepted, and the exception was then and there duly noted by the court.

The counsel for the defendant then asked the court to rule and decide that upon the proofs in this action the plaintiff is not entitled to recover upon the seventeen bonds which were originally transferred by the said supervisor and commissioners of the said town of Scipio to the Lake Ontario, Auburn and New York Railroad Company in exchange for its stock, and which were afterwards transferred by said railroad company to Slocum Howland, nor upon any or either of said seventeen alleged bonds, nor upon any or either of the coupons annexed thereto, because the signatures to said alleged written assents of the said alleged resident taxpayers of said town have not been proved, nor is it proved that two-thirds of the resident persons taxed in said town, as appearing upon the assessment-roll of such town made next previous to the time when said seventeen alleged bonds, and the coupons annexed thereto, were so transferred by said supervisor and commissioners to said railroad company as aforesaid, had subscribed their names to said written assents, and that the
303 plaintiff in order to entitle him to recover, was bound to make such proofs. But his honor the judge declined and refused to so rule and decide, and to such ruling and decision the counsel for the defendant then and there duly excepted, and the exception was then and there duly noted by the court.

The counsel for the defendant also then and there requested the court to rule and decide that the plaintiff was not entitled to recover upon any of said seventeen alleged bonds or coupons, because said alleged written assents of said alleged tax-payers of said town are void on their face, for the reason that the Lake Ontario, Auburn, and New York Railroad Company is not named or in any manner designated or expressed therein.

His honor the judge declined and refused to so rule and decide, and to such ruling and decision the counsel for the defendant then and there duly excepted, and the exception was then and there duly noted by the court.

The counsel for the defendant also then and there requested the court to rule and decide, that upon the facts proven in the case, the plaintiff is not entitled to recover upon any of said seventeen alleged bonds, or any of the coupons thereto annexed, because it appears by the
304 proofs in the cause that said supervisor and commissioners did not, nor did any or either of them, borrow any money of said railroad company, nor did they, or any or either of them, transfer said seventeen alleged bonds, or in any manner issue the same, or any or either of them, for borrowed money, and because said supervisor and commissioners had no right, power, or authority, under said act of the legislature first mentioned and referred to in the plaintiff's complaint or declaration, to issue said bonds, or to transfer the same to said railroad company in exchange for its stock, or for any other cause or purpose, except for money borrowed.

His honor the judge declined to so rule or decide, and to such ruling and decision the counsel for the defendant then and there duly excepted, and the exception was then and there duly noted by the court.

The counsel for the defendant also then and there requested the court to rule and decide, that the plaintiff was not entitled to recover upon

any of said seventeen alleged bonds or coupons for the following reason: Because said alleged assents of said alleged tax-payers of said town had become inoperative before the said seventeen bonds were in any manner transferred or issued by said supervisor and commis-
305 sioners, or any or either of them, to said railroad company, for the reason that said alleged written assents of said alleged tax-payers were procured with reference to the assessment-roll of said town for the year 1852, and not with reference to the assessment-roll of said town for the year 1853, and because there is no proof in the cause that two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of said town made next previons to the time when said bonds were so issued and transferred to said railroad company in exchange for stock of said company as aforesaid, ever in any manner assented to the issuing of said bonds, or to the transfer thereof to said railroad company, or to the borrowing of any money pursuant to the said act of the legislature; and because the said supervisor or commissioners had not, nor had any or either of them, any right, power, or authority so to issue or transfer said bonds to said railroad company, or in any manner to negotiate or sell the same, without the written assents of two-thirds of the resident persons taxed in said town, as appearing upon the assessment-roll of said town made next previous to the time when said bonds were so issued or transferred to said railroad company, but his honor the judge declined to so rule or decide, and to such ruling or
306 decision the counsel for the defendant then and there duly excepted, and the exception was then and there duly noted by the court.

The counsel for the defendant also then and there requested the court to rule and decide, that the plaintiff was not entitled to recover upon any of said seventeen alleged bonds, or upon any of the coupons thereto annexed, because the said affidavit of the said Thomas L. Squyers and Valson Smith, annexed to said alleged written assents of said alleged tax-payers of said town, does not state or in any manner prove that the persons whose written assents are thereto attached comprise two-thirds of all the resident tax-payers of said town as appearing upon its assessment-roll made in the year 1853, but does expressly refer to the assessment-roll of said town made and prepared by the assessors of said town for the year 1852; and because said affidavit is no evidence that the persons who subscribed said written assents constituted two-thirds of the resident tax-payars of said town appearing on its assessment-roll for the year 1853, which was the assessment-roll of said town which was made next previous to the time when the said seventeen alleged bonds were so issued and transferred to said railroad company as aforesaid.

307 His honor the judge declined to so rule or decide, and to such ruling and decision the counsel for the defendant then and there duly excepted, and the exception was then and there duly noted by the court.

The counsel for the defendant then and there also requested the court to rule and decide that the plaintiff was not entitled to recover on any of said seventeen alleged bonds, or upon any coupons thereto annexed, because, until the genuineness of the signatures to said alleged assents was proved in some way other than by said affidavit annexed thereto, there is no evidence that the said William Taber, Calvin Tracy, and George Slocum had any power or authority to execute or deliver said alleged bonds or to do anything under said act, but his honor the judge declined to so rule or decide, and to such ruling and decision the

counsel for the defendant then and there duly excepted, and the exception was then and there duly noted by the court.

The counsel for the defendant also then and there requested the court to rule and decide that upon the proofs the plaintiff was not entitled to recover in this action upon any of said seventeen alleged bonds, or upon any coupon thereto annexed, because the recitals in said alleged
308 bonds, and in the testatum clause to said alleged bonds, are not evidence that the prior conditions required by said act, to the issuing of said bonds, had been complied with; that the right, power, and authority of the said William Taber, Calvin Tracy, and George Slocum to execute said alleged bonds could not be proved by the recitals in said bonds, or in said testatum clause thereof, and if so, that such recitals are not sufficient for that purpose; but his honor the judge declined to so rule or decide, and to such ruling and decision the counsel for the defendant then and there duly excepted, and the exception was then and there duly noted by the court.

The counsel for the defendant also then and there requested the court to rule and decide that the plaintiff was not entitled to recover upon any of the said seventeen alleged bonds, or upon any of the coupons annexed thereto, because the plaintiff is not a bona fide holder of said seventeen alleged bonds, or any or either of them, or of the coupons annexed thereto, or of any or either of them; nor has he acquired the rights of a bona fide holder thereof, because it appears that said seventeen bonds, and the coupons annexed thereto, were transferred by said supervisor and commissioners, or one or more of them, to the Lake
309 Ontario, Auburn, and New York Railroad Company without authority and in violation of said act of the legislature first mentioned and referred to in plaintiff's complaint or declaration in exchange for stock of said railroad company, and because said seventeen bonds and coupons thereto annexed were afterwards transferred by said railroad company to one Slocum Howland, who received the same with notice of the fact that they had been so transferred by said supervisor and commissioners, or one or more of them, to said railroad company on the 7th day of January, 1854, in exchange for stock of said railroad company, and not for money borrowed, and because said seventeen alleged bonds and the coupons annexed thereto were held and owned by the said Slocum Howland until after the principal sum for which said bonds were made, as well as the interest thereon, had all become due and payable, to wit, in the month of September, 1874, and therefore the said plaintiff is chargeable with notice of the fact that the conditions required by said act of the legislature to be performed prior to the authority to issue any bonds under said act, or to borrow any money pursuant thereto, had not, in fact, been performed.

His honor the judge declined to so rule or decide; to which ruling and decision the counsel for the defendant then and there duly excepted, and the exception was then and there duly noted by the court.

310 His honor the judge then ruled and decided that the plaintiff, upon the facts proven, was entitled to recover in this action the whole principal sum of said bonds, with all interest accrued thereon within six years next before the commencement of this action, amounting in all to forty thousand four hundred and two dollars, and directed the jury to find a verdict for that sum for the plaintiff; and to which charge, ruling, and direction the counsel for the defendant then and there duly excepted, and the exception was then and there duly noted by the court.

The jury then, under the direction of the court as aforesaid, and without retiring from the court, found their verdict for the plaintiff for the sum of forty thousand four hundred and two dollars.

The counsel for the defendant then and there, by the permission of his honor the judge, moved the court for a new trial upon the judge's minutes, and after hearing the counsel for the respective parties an order was entered and filed in the office of the clerk of said court, on July 11th, 1876, directing judgment to be entered in favor of the plaintiff upon said verdict for the said amount thereof against the defendant, but staying the actual entry of such judgment for thirty
311 days, to allow the defendant to make and file a bill of exceptions.

And because none of the said exceptions, offers, and requests so offered, made, and excepted to, as aforesaid, to the rulings, opinions, and decisions of the said judge, do appear upon the record of the said trial, therefore, on the prayer of the said defendant by his said counsel, his honor the judge hath to this bill of exceptions set his hand and seal, according to the statute and the rules and practice of this court in such case made and provided, this 20th day of September, one thousand eight hundred and seventy-six.

WM. J. WALLACE,
U. S. Dist. Judge.

S. E. DAY, *Defendant's Attorney, Moravia, N. Y.*
H. L. COMSTOCK, *of Counsel.*

312 (Indorsed:) C. C. U. S., N. D. of N. Y. William P. Wright vs. The Town of Scipio. Copy bill of exceptions on the part of the defendant. S. E. Day, def't's attorney. Filed Sept. 23, 1876.

313 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judges of the circuit court of United States for the northern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which in is the said circuit court before you between William P. Wright and the town of Scipio, a manifest error hath happened, to the great damage of the said The Town of Scipio, as by its complaint appears; we being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may
314 cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 23rd day of November, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] CHARLES MASON,
Clerk of the Circuit Court of the United States for the Northern District of New York.

S. E. DAY,
Attorney for the Plaintiff in Error.

(Indorsed:) Supreme Court of the United States. The Town of Scipio, plaintiff in error, against William P. Wright, defendant in error. Writ of error. S. E. Day, attorney for plaintiff in error, Moravia, N. Y. Filed Nov. 23, 1876.

315 Supreme Court of the United States, northern district of New York.

WILLIAM P. WRIGHT
ag'st
THE TOWN OF SCIPIO.

Know all men by these presents that we, Isaac Jump, Nathan E. Webster, R. N. Hudson, Theodore Jump, Enos T. Shaw, J. Post, Nelson O'Hara, J. Poppine, Erastus Close, George Clark, Fayette Vanlin, D. Hunter, Volney Vanlin, Kelsey Tuttle, Geo. G. Barnes, of Scipio, New York, are held and firmly bound unto William P. Wright, of Mt. Royal, Florida, in the sum of eighty-seven thousand dollars, to be paid to the said William P. Wright, his executors or administrators; to which payment well and truly to be made we bind ourselves, & each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals, dated this 7th day of November, 1876.

Whereas the above named The Town of Scipio hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled action by the circuit court of the United States in the northern district of New York:

316 Now, therefore, the condition of this obligation is such, that if the above-named The Town of Scipio shall prosecute its *the* said writ of error to effect and answer all costs and damages, including just damages for delay & costs & interest on the appeal, if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

R. N. HUDSON.	[L. S.]
THEO. JUMP.	[L. S.]
ENOS T. SHAW.	[L. S.]
JACOB POST.	[L. S.]
NELSON O'HARA.	[L. S.]
JOSH. POPPINE.	[L. S.]
ISAAC JUMP.	[L. S.]
NATHAN E. WEBSTER.	[L. S.]
ERASTUS CLOSE.	[L. S.]
GEORGE CLARK.	[L. S.]
FAYETTE VANLEIN.	[L. S.]
DERYL HUNTER.	[L. S.]
VOLNEY VANLIEN.	[L. S.]
KELSEY TUTTLE.	[L. S.]
GEO. G. BARNES.	[L. S.]

NORTHERN DISTRICT OF NEW YORK,
Cayuga County, ss:

On this 7th day of November, A. D. 1876, before me personally appeared Isaac Jump, R. N. Hudson, Theo. Jump, Enos T. Shaw, J. Post, Nelson O'Hara, Jos. Poppine, Nathan E. Webster, Erastus Close, George Clark, Fayette Vanlien, Deryl Hunter, Volney Vanlien, Kel-

sey Tuttle, Geo. G. Barnes, each to me personally known to be the
317 same persons described in and who severally subscribed the foregoing undertaking, and duly acknowledged the execution of the same for the purposes therein mentioned.

CHARLES L. ADAMS,
U. S. Commissioner, Northern Dist. of N. Y.

NORTHERN DISTRICT OF NEW YORK,
Cayuga County, ss:

On this 7th day of November, A. D. 1876, before me personally appeared Nelson O'Hara, Isaac Jump, Nathan E. Webster, Erastus Close, George Clark, Fayette Vanlien, & Deryl Hunter, and being by me duly sworn, each for himself deposes & says that he is a resident & freeholder in the town of Scipio, Cayuga County, New York, & is worth the sum of $8,000 over & above all his just debts and liabilities & property exempt from execution.

NELSON O'HARA.
ISAAC JUMP.
NATHAN E. WEBSTER.
ERASTUS CLOSE.
GEORGE CLARK.
FAYETTE VANLIEN.
DERYL HUNTER.

Subscribed & sworn to before me this 7th day of November, 1876.

CHARLES L. ADAMS,
U. S. Commissioner, Northern Dist. of N. Y.

318 NORTHERN DISTRICT OF NEW YORK,
Cayuga County, ss:

On this 7th day of November, A. D. 1876, before me personally appeared R. N. Hudson, Theo. Jump, Enos T. Shaw, Jacob Post, & Geo. G. Barnes, and each being by me duly sworn, each for himself deposes and says that he is a resident and freeholder in the town of Scipio, Cayuga County, New York, and is worth the sum of $5,000 over and above all his just debts and liabilities and property exempt from execution.

R. N. HUDSON.
THEO. JUMP.
ENOS T. SHAW.
JACOB POST.
GEO. G. BARNES.

Subscribed and sworn to before me this 7th day of November, A. D. 1876.

CHARLES L. ADAMS,
U. S. Commissioner, Northern Dist. of N. Y.

NORTHERN DISTRICT OF NEW YORK,
County of Cayuga, ss:

On this seventh day of November, A. D. 1876, before me personally appeared Joseph Poppine, Volney Vanlien, and Kelsey Tuttle,
319 and each being by me duly sworn, each for himself deposes and says that he is a resident and freeholder in the county of Cayuga, State of New York, and is worth the sum of $3,000 over and above all his just debts and liabilities and property exempt from execution.

JOSEPH POPPINE.
VOLNEY VANLIEN.
KELSEY TUTTLE.

Subscribed and sworn to before me this 7th day of November, 1876.

CHARLES L. ADAMS,
U. S. Commissioner, Northern Dist. of N. Y.

320 (Indorsed:) Supreme Court of the United States. The Town of Scipio, plaintiff in error, against William P. Wright, defendant in error. Copy. Bond on appeal. S. E. Day, attorney for pl'ff in error, Moravia, N. Y.

I approve the within bond as to form, manner of execution, and the sufficiency of the sureties.

Dated Nov. 17, 1876.

WM. J. WALLACE.

Filed November 23, 1876.

321 UNITED STATES OF AMERICA, *ss:*

To William P. Wright, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of New York, wherein the Town of Scipio is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 9th day of October, in the year of our Lord one thousand eight hundred and seventy-six.

WM. J. WALLACE,
U. S. Dis't Judge.

Supreme Court of the United States.

STATE OF NEW YORK,
Cayuga County, ss:

322 S. Edwin Day, being duly sworn this 22d day of November, A. D. 1876, before me, the undersigned, a notary public in and for the said county and State, made oath that he delivered a true copy of the within citation to David Wright, at Auburn, N. Y., this day, said Wright being the attorney of William P. Wright in said citation mentioned.

[SEAL.] LEANDER FITTS,
Notary Public.

(Indorsed:) Supreme Court of the United States. The Town of Scipio, plaintiff in error, against William P. Wright, defendant in error. Citation. S. E. Day, attorney for plaintiff in error, Moravia, N. Y. Filed Nov. 23, 1876.

323 UNITED STATES OF AMERICA,
Northern District of New York, ss:

I, Charles Mason, clerk of the circuit court of the United States of America for the northern district of New York, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts

therefrom, now on file and remaining of record in my office, being a full and complete copy of the record and proceedings in the suit of William P. Wright vs. The Town of Scipio.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Utica, in said district, this 22d day of February, A. D. 1877.

[SEAL.] CHARLES MASON, *Clerk.*

(Indorsement on cover:) No. 190. The Town of Scipio, plaintiff in error, vs. William P. Wright. N. New York, C. C. U. S. Filed 27th September, 1877.

2 Bl. 578 —
92 U.S. 289 —
53 N.Y. 536
71 N.Y. 573

SUPREME COURT,

OF THE UNITED STATES.

THE TOWN OF SCIPIO, Plaintiff in Error,

AGAINST

WILLIAM P. WRIGHT, Defendant in Error.

STATEMENT OF CASE FOR PLAINTIFF IN ERROR.

Error to the Circuit Court for the Northern District of New York, where judgment was entered against the plaintiff in Error for the sum of $43.257.21, on the 28th September, 1876, after a trial by jury before the Hon. Wm. J. Wallace, District Judge, holding the Circuit, and after denial of a motion for a new trial made on his minutes. (See Record pp. 84, 104.)

The suit was brought in December, 1874, to recover the principal and interest of 25 so-called bonds of $1000 each, of the town of Scipio, County of Cayuga, issued under the supposed authority of an Act of the Legislature of New York, passed April 16, 1852,

entitled "*An Act to authorize any Town in the County of "Cayuga to borrow money for aiding in the construction* of of a Rail Road or Rail Roads, from Lake Ontario to the New York and Erie or Susquehanna and Cayuga Rail Road." For convenience of reference, the 1st, 2d and 10th sections of the Act are here set forth *in haec verba*, as follows:—

§ 1. It shall be lawful for the supervisor of any town in the county of Cayuga, and the assessors of such town, who are appointed by this act as commissioners to act in conjunction with the said supervisor in effecting and executing the purposes of this act, to borrow on the faith and credit of said town, such a sum of money as they may deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as may be agreed upon, not exceeding seven per cent. per annum, and to execute therefor under their official signatures, a bond or bonds on which the interest shall be made payable annually or semi-annually during the term said money may be borrowed, and the principal and interest of which loan shall be made payable in such sums, and at such times and place as shall be agreed upon and expressed in the bonds duly executed under the authority of this act. All moneys borrowed under the authority of this act, shall be paid over to the president and directors of such railroad company, (now organized or such company as may be organized according to the provisions of the general railroad law, passed April 2, 1850,) as may be expressed by the written assent of two-thirds of the resident tax payers of said town, to be expended by such president and directors in grading, constructing and maintaining a rail-

road or railroads passing through the city of Auburn, and connecting Lake Ontario with the Susquehanna and Cayuga railroad, or the New York and Erie railroad; provided always, that the said supervisor and commissioners shall have no power to do any of the acts authorized by this act, until a railroad company has been duly organized according to the requirements of the general railroad law for the purpose of constructing the aforesaid described railroad, and the writen assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment roll of such town made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga county, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid, comprise two-thirds of all the resident tax payers of said town on its assessment roll next previous thereto.

§ 2. It shall be lawful for the supervisor and commissioners of any town in said county, on obtaining and filing such assent, as provided in the first section, to subscribe for and take in the name of and for said town, such a nnmber of shares of the capital stock of such company as shall or may be organized for the purpose of constructing the aforesaid described railroad or railroads, as will be equal to the amount of the bonds executed under the authority of this act; and such town may, with the assent of the number of tax payers aforesaid, instead of borrowing the money allowed to be raised upon the bonds of said town, or

upon its faith and credit, as in the first section of this act mentioned, raise the amount of its subscription to the stock of said railroad company by tax upon the taxable property of said town, and which tax may be levied and collected in the manner mentioned in this act by the supervisors of said county, and in such sums as the said supervisors may determine and direct.

§ 10. The assessors appointed to act as commissioners by section first of this act, shall hold their office till the next annual town meeting of their town, when it shall be the duty of the electors of said town to elect, by ballot, in the same manner that town officers are now elected, two commissioners to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of this act, and the action of a majority of such supervisor and commissioners shall at all times be sufficient for carrying into effect the provisions of this act.

A Railway Company was formed under the general Railroad statutes of New York, by the filing of Articles of Association in the office of the Secretary of State of said State, on the 23d of August, 1852, for the purpose of constructing a railroad between Lake Ontario and a point named on the Susquehanna and Cayuga Railroad, passing through the city of Auburn, the town of Scipio and other towns. The name of this organization was the Lake Ontario Auburn and New York Railroad Company. (Record p. 89. fol. 274.)

Before or after this organization was effected, the written consents of numerous tax payers of the town of Scipio, without date, were procured, to which was annexed an affidavit of two assessors of the town

verified Dec. 8, 1852. in which they set forth that such "written assents comprise two-thirds of all resident "tax payers of said town of Scipio, on the assessment "roll thereof made and prepared by the assessors of "said town for the year *one thousand eight hundred and "fifty-two.*"

These consents are conceded to be in form and substance a compliance with the statute in all respects, except one, to-wit, that they contain *no expression of the name or other designation* of any particular company or corporation as entitled to receive the monies to be borrowed by the town on its bonds. Instead of any such expression, the language is, "the money so bor-"rowed may be paid to the President and Directors of "a railroad company organized, according to the re-"quirements of the general railroad law, for the pur-"pose of constructing a railroad connecting Lake On-"tario with the Susquehanna and Cayuga Railroad, "and passing through the city of Auburn." (For consents and affidavit of the assessors see record p. 90.)

The consents with the affidavit attached were filed in the County Clerk's office, January 11, 1853. (pp. 91, 92, fol. 279.)

The 25 instruments called bonds were all in the same form and all bore date May 20, 1853. Those numbered 1 to 8, were payable to Slocum Howland, (a resident of the town,) and all the others to bearer. The whole series were due January 1, 1873, and bore interest at seven per cent. per annum, for which semi-annual coupons were annexed. *They had no seal attached*, and therefore in legal construction may be regarded as promissory notes. (Record pp. 92, 93, fol. 281 to 284.)

The bonds were issued at different times, after their common date as follows:

Numbers 1, 2, 3, on the 25th of May, 1853; numbers 4, 5, on the 13th of August, 1853; numbers 6, 7, 8, on the 23d of September, 1853. The remaining 17, being numbers 9 to 25, inclusive, on the 7th of January, 1874. As to the persons to whom the issues were made, Nos. 1 to 8, inclusive, were issued to *Slocum Howland*, for money to the amount of $7.500. Nos. 9 to 25, inclusive, *were issued directly to the Railroad Company above named, in exchange for its stock, and upon no other consideration.* (For date of issue, to whom issued, and the consideration, see record p. 97, and written admission p. 96. See also the written receipt signed by the officers of the Company, p. 97.) The Company having received from the town the $7.500, paid by Howland for the bonds Nos. 1 to 8, and afterwards receiving from the town directly the other seventeen bonds, endorsed its stock scrip or certificate issued to the town as fully paid. (See the scrip and the endorsements, p. 98.)

The further history of the bonds is as follows:

Slocum Howland, at some time not stated, but after the 7th of January, 1854, being, as already shown, the holder of the eight bonds issued to him for money, purchased directly from the Railroad Company, the other seventeen bonds issued by the town to the Company, as also before stated, *having full notice that the Company had received them* from the town in exchange for stock. Thus he became the holder of all the bonds, and continued to hold them till September, 1874. (See written admission p. 96.) The time of his purchase

of the 17 bonds from the Railroad Company does not appear, and there is no explanation of the consideration or circumstances of that transaction.

The declaration or complaint contains a separate count upon each bond, 25 counts in all, and each count avers that the plaintiff below purchased the bond in Florida, *on the 1st of September*, 1874, down to which time, as the written admission already referred to, says, Howland held them. The plaintiff below therefore received all the bonds *a year and eight months after the principal became due*, and he took them of Howland, who had acquired them in the manner already stated. It appears that the town paid the interest to Howland to, and including July 1, 1857, (p. 96, fol. 289.) but never paid any interest afterwards, (p. 87, fol. 269,) so that when the plaintiff purchased the bonds, as he claims, the interest had been unpaid for 17 years. Thus they were dishonored both as to principal and interest.

David Wright, Esq., of Auburn, N. Y., the father and the attorney of the plaintiff below, being called as a witness for the defendant, stated so far as he was willing, the circumstances of the purchase by his son The transaction took place at Auburn. The witness was present and so was Howland. *Nothing was paid.* A note was given but witness declined to state for how much. He guaranteed the note, but nothing was ever paid upon it. (See Record, p. 99.) This suit was commenced December, 7, 1874. (p. 97, fol. 291.)

The matters above set forth are contained in the bill of exceptions, made by the defendant below, as well as other details not now deemed material to the ques-

tions to be presented. The plaintiff below, also made a separate bill of exceptions for the purpose merely of reviewing the ruling at the trial, which excluded from the recovery all interest coupons which had been due more than six years before the commencement of this suit.

ASSIGNMENT OF ERRORS AND POINTS FOR PLAINTIFF IN ERROR.

FIRST.

The transaction called a purchase, by the plaintiff in the suit, of the 25 bonds, was illusive and unreal, justifying the inference, that it was a mere contrivance to create a jurisdiction in the Federal Courts without any real and actual change of interest in the subject of the litigation. The bonds had remained in the hands of Howland for at least 20 years, and for over 17 years the town had refused to acknowledge them in any manner or form. The principal had been due for nearly two years. The decisions in the State Court of last resort in other cases had rendered a recovery upon them impossible. The motive of the transaction is too plain for disguise. But if its mere forms are deemed sufficient to change the title to the bonds, as between the parties to it, and to confer jurisdiction (a question referred to the court,) then we are content to say, that the plaintiff is entitled to no consideration *as a bona fide purchaser*, and can only stand upon the title of his vendor. If Howland could not enforce the bonds, the plaintiff is in no better situation, because he took them after they had been palpably, notoriously, and for a

long time dishonored. The general question to be considered, therefore, is whether Slocum Howland, the plaintiff's vendor, could sue and recover upon these instruments. And inasmuch as he came to hold the bonds at different times and in different circumstances, some of the points to be urged will not be applicable to every bond.

SECOND.

The counsel for the defendant below, requested the court to rule and decide that the plaintiff could not recover on the seventeen bonds, Nos. 9 to 25, inclusive, because, instead of being issued for money borrowed, they were issued directly to the Railroad Company in exchange for its shares of stock. The court refused so to rule or decide, and this was error. (See this exception p. 101, fol. 304.

I. Inasmuch as the plaintiff below, received such title as he has to all the bonds, from Slocum Howland, and has no claim to the character of a *bona fide* purchaser, and inasmuch as Howland received these seventeen bonds from the Railroad Company, with notice that they had been issued to the Company in exchange for its stock, (See the preceding statement,) the question directly arises whether they were lawfully issued, so that the Company itself could enforce them. It is freely conceded that when *the power* to issue the bonds came into full existence, the abuse of such power by the town supervisor and commissioners, by issuing them without consideration, or for a forbidden consideration, would not vitiate them in the hands of a bona fide holder. That proposition has never been doubted in New York. (See Bank of Rome, vs. Vil-

lage of Rome, 19 N. Y. 20,) and it is clear upon many decisions of this court involving analogous principles. But in this case the question is whether *it was a lawful issue between the original parties.*

II. And this question involves no rule or principle of the Commercial Law. It is true, that the so-called bonds were negotiable instruments, but that signifies nothing as between the original parties to the transaction. The question would be the same if they had been non-negotiable. It is a question arising wholly upon the terms and meaning of the New York statute which is the source of all the power that the town of Scipio ever had to issue the bonds. It is therefore assumed, in accordance with an established rule, that this court, if it finds a settled interpretation by the courts of New York of this very statute, will follow such interpretation.

III. In the highest State court of New York, it is entirely settled, without a dissenting voice, that (saving the rights of bona fide purchasers,) this statute forbids the issuing of the town bonds for any other purpose than *to borrow money.* In *Starin vs. the Town of Genoa*, 23 N. Y., 439, the case arose under the same Act, that being one of the towns embraced in its provisions. Among the objections urged against the validity of the bonds was the one that they had been issued to the Railroad company for stock, and on that as well as upon other grounds, they were held to be void. As to this particular point, see the opinion of Judge Lott, at pp. 453, 455. At the same time the same point was decided in *Gould vs. Town of Sterling*, 23 N. Y., 456. See opinion of Judge Selden, pp. 458, 460. The

proposition was repeated with peculiar emphasis, and the reasons for it pointedly stated in *The People Ex Rel., Fiedler, vs. Mead*, 24 N. Y., 114, 124, but held unavailable in that case, because the holder of the bonds was protected as a *bona fide* purchaser in the market. In *Venice vs. Woodruff*, 62 N. Y., 462, which was a suit in Equity to cancel the bonds, it was distinctly assumed that the defendants were *bona fide* holders. The suit was held not to lie because there was no right or occasion to resort to Equity. In short, in the courts of New York, there has never been a single dissent or the slightest wavering on the point now considered.

III. If we look from the decisions in New York to the statute, we find it to be an exact authority to "*borrow money on the faith and credit of the town*, * * to execute therefor a bond or bonds," with a further direction that "all monies borrowed shall be paid to the President and Directors of such Railroad Company &c." The rate of interest was not to exceed seven per cent. and the clear purpose of the statute was to commit the negotiation of the bonds for money to the town instead of delivering over the bonds to a Railroad Company. The policy is sufficiently evident, and if it were not, it is yet impossible to mistake the will of the Legislature.

IV. In this court two or three cases have arisen upon the bonds of other towns, issued under the same statute, (*Venice vs. Woodruff*, 2 Otto 494, *Genoa vs. Watson* Id, 502, and *Genoa vs. Woodruff*, Id, 502.) These cases all came before the court on Error from the U. S. Circuit and none of them where in direct review of the

New York decisions above mentioned. The parties were different and the facts not in all respects the same. But the Court refused to follow the New York cases in the very material proposition that the filed assents of tax payers and affidavit of the assessors were not evidence as to the number and genuineness of the assents, even in favor of *bona fide* holders. The opinion upon which the three cases last mentioned were decided, was pronounced in the first named case. The learned Justice who delivered it, discussed at length the principal question, as to the effect of the filed assents and affidavit, maintaining upon reason and authority, that the statute intended to make these documents conclusive evidence in favor of *bona fide* dealers in the bonds. *Under the same condition of good faith* as we understand the opinion, the direct issue of the bonds to the Railroad Company would not be a fatal defect in the execution of the power, although this is not referred to as a point involved in that case. That the plaintiff claiming to enforce the bonds, was a holder in good faith is explicitly affirmed as the basis of the decision.

THIRD.

The question next to be considered relates to the same seventeen bonds involved in the preceding point and to five other bonds numbered 4 to 8 inclusive. As to all the bonds after numbers 1, 2 and 3, we say they were void because they were issued, whether for money borrowed, or for the Railroad stock, after the assents taken, filed and verified with reference to the town assessment roll of 1852, had spent their force and ceased to be authority. The court at the trial erred in not so ruling as requested. (See the exception, record p. 100, fol. 301.)

1. By the terms of the authorizing Act, the assent of two-thirds of the tax payers *appearing on the assessment roll of the town* "*made next before the time such money may be borrowed*," must be obtained, and filed with the affidavit, which must state, that the persons whose assents are filed comprise "*two-thirds of the tax payers on the assessment roll next previous thereto.* In proceeding under this statute the course is perfectly plain. First. consents must be obtained and verified as being two-thirds with reference to an annual assessment roll, and it must be the roll *immediately preceding this filing.* This being done according to the statute, the authority to borrow money is complete until another tax roll is made out, but does not *exist after that*, because a new tax must not intervene between the one to which the assents and affidavit relate, and the *borrowing* of the money.

2. The tax payers of a town are a changing, fluctuating mass. Under this statute, two-thirds residing in the town in a particular year, and found by the assessors in making their roll, may confer the power now in question. But before the next annual roll is made, the assenting two-thirds may be greatly reduced, and the non-assenting one-third may be greatly increased in numbers. Views and opinions may change as to the expediency of bonding the town at all, and circumstances may change also. The power is derived from the individual signatures of persons who are part of a mass—persons half of whom may die or sell their estates,and remove before the power is executed. Therefore the Legislature said it must not be a power *of indefinite continuance*, but must be executed within the period intervening before the next annual roll.

3. To reason in the method of *reductio ad absurdum* if such, as we maintain, is not the true reading and intent of the statute, then the meaning must be that the consents taken in a particular year *never* spend their force, and the power derived from them may be executed without limit of time. This would be an absurd conclusion. A quarter of a century may elapse, the situation and circumstances may totally change, and, instead of two-thirds, not a single tax payer may be in favor of the bonding scheme. Indeed very few, if any, of the persons who signed the power may be alive, and yet the power may be executed, unless the statute has marked the limit, as we venture to affirm it has.

4. The statute of New York, relating to assessment rolls is as follows: (See 1 Rev. Stat. 1st ed. p. 393, sec. 19, or 1 Edmonds Statutes, p. 365, sec. 19.)

"The assessors shall complete the assessment roll on "or before the first day of August in every year."

Referring now to the preceding statement of the case, we find that the bonds numbers 4, 5. were issued to Howland, August 13, 1853, the bonds 6, 7, 8 also to Howland, September 23, 1853, and the bonds 9 to 25 inclusive, to the Railroad Company, January 7, 1854. *The consents of the tax payers had relation to the roll of* 1852, *and the affidavit filed with them has the same relation.* It therefore appears, in respect to these 22 bonds, that the power was not used for any purpose until, in accordance with the State law, the tax roll of 1852 had been superceded by that of 1853, and as to 17 of them not until the calendar year of 1874 had been reached.

5. While we take it to be a safe assumption, that all persons, in all circumstances, dealing in these bonds, must be deemed to be informed of the power of attorney, or written commission, under which the town supervisor and commissioners could bring their town under bonds, because such power is a public record, filed in a public office, and is pointed out by the statute itself, yet it is conceivable that a purchaser of bonds floating in the market might not know the time of their issue, and therefore not know that the power when exercised was extinct by the lapse of time. In such a case a question might arise, the solution of which need not now be sought for, because,

(1.) The bonds 4, 5, 6, 7, 8 were delivered by the town officers directly to Howland, himself, in August and September, 1853, for money, (see p. 97, and the preceding statement.) *He therefore knew when the money was borrowed on these bonds.* It appears also that on the face of all the bonds the County Clerk before their issue wrote and signed *and dated* a certificate declaring the fact that a paper purporting to be the written assent of two-thirds of the tax payers, with the affidavit required by the statute, had been filed in his office, see the certificate on the last 17 bonds, dated *January* 7, 1854. (Record p. 95, and also p. 97, fol. 292.)

It appears also by a particular averment in each of the 25 counts of the complaint, that the clerk signed this certificate on every bond at the request of the town, before the bond was issued. Therefore the true date of issue appeared to every person who in any circumstances received a delivery of a bond.

(2.) As to Slocum Howland, he had precise information that the assents, taken as the authority for issuing any bonds, *had relation to the roll of* 1852, because, he discounted the first three bonds to-wit, Nos. 1, 2, 3, in May, 1853, which was before the roll of 1853 could be made. (Record p. 97, fol. 292 and statement supra.) Thus he *began to be a dealer* in the bonds while the power was in force. When he dealt in the subsequent 22 bonds, he therefore knew both the extent of the power and that it was exhausted by the lapse of time. The bonds were therefore void as against him, and, as already seen, the plaintiff below is in no better situation.

FOURTH.

The court below erred in not sustaining the objection made at the trial to the validity of *all the bonds*, on the ground that the written assent of the tax payers did not conform in substance or meaning to the authorizing statute in that such assent did not *express* the Railroad corporation to which the monies to be borrowed by the town should be paid. (See the exceptions p. 91, fol. 277 and p. 99, fol. 298, 299.)

I. The statute enacts, in its 1st section, that none of the powers which it creates shall be exercised until the written assent of two-thirds of the tax payers shall be procured and filed with the affidavit annexed. Therefore the written assent lies at the foundation of all authority to proceed any further. But the same section also enacts in exact terms that the monies to be borrowed "*shall be paid over to such Railroad company as may be expressed in the written assent.*" Hence, there is no

authority to borrow at all, unless a written assent has been filed "*expressing*" the company which is to receive the money for its stock.

II. The assent actually procured and filed, professed to give authority to pay over the money to any Railroad Company organized at any time to construct a road between the points named in the statute. (See the preceding statement and the consent p. 99.) Such an assent did not meet the requirement of the Act, because,

1. The statute intended to give to the whole body of tax payers, and especially to the non-assenting minority all the protection which could be derived from the exercise of the best judgment of the majority, in selecting the very corporation which should expend the money, and whose stock was to be taken for the town. It contemplated that a written paper should be presented to each tax payer precisely defining the company to be entrusted with the money of the town, and its application to the purpose in view, so that each person might judge for himself whether it was or was not expedient to expose himself and others to taxation for monies to be paid over to that very corporation.

The judgment so to be exercised, would have reference to the character and responsibility of the projectors, to the actual route and location in relation to town interests, and to any and all circumstances which might determine the exercise of individual judgment.

2. It is true that a corporation had been organized to build a Railroad between the points named in the statute. But the tax payers did not consent that the monies should be paid over to that corporation. That

corporation is not *expressed* in the instrument. If it had been, no one can say, that two-thirds of the tax payers would have consented. They might well distrust the scheme. They might withhold their assent, because the projectors had neither character or capital. Not to express or name any particular organization, and to leave the subject open, was doubtless a suitable contrivance to obtain assents, but it was not what the statute prescribed or intended. More than one corporation might be organized. If so, and if the assent as given was valid, the monies might be borrowed and paid to either. But the statute said the tax payers must *express* the corporation before any monies could be borrowed at all.

3. The objection here considered is not, that the supervisor and commissioners of the town did not follow the authority as the tax payers professed and attempted to confer it. The difficulty is back of that. The statute itself is the original source of all authority, and it enacted in terms that the power of borrowing should not come into existence at all until two-thirds of the tax payers should exercise each his individual judgment by expressing the particular corporate organization in whose favor such power might be exercised. The statute did not confer this right or function of selection and designation on the town officers, and according to elementary principles they could not acquire it by delegation from the tax payers.

III. If we have correctly interpreted the statute it would seem that the argument need go no further. But we observe:

1. In every one of the numerous adjudged cases upon

statutes of this nature, providing for the issue of municipal bonds, where such statutes do not operate at all until the issue has been authorized by a resolution of some public body, or the assent of taxpayers, to be filed in a public office and made a public record, it has been assumed that such public proceeding or record *must be shown*. In this very case the plaintiff below produced and read in evidence the public record which is the assent of the taxpayers *as the authority for issuing the bonds*, and we think no one will contend that he could have made out his case without such production. But if the town could not be bonded without any assent at all of the taxpayers, it is just as plain that it could not be bonded without *such an assent as the law required*. There is no difference in legal result between no assent and an insufficient assent.

The defect was patent to all the world. Indeed, in all the judgments of the courts maintaining bonds issued under such statutes, the record consisting of the filed assents, with or without an affidavit to be filed with them, has been appealed to and relied upon as the part of the original authority upon which bona fide dealers might safely rely. They were supposed to know the authority but not to know abuses and irregularities in its execution. This can only mean that the authority must exist *and must on its face be sufficient*.

2. It has never been held that acts, which can be valid only when done under a written authority, are valid when they involve a clear departure from such authority. But this principle does not deny that the act may *appear* to be, when it is not, in fact, within

the authority, and yet be a valid act, if the defect lies in some fact or circumstance in its nature inaccessible to the dealer in good faith. The want of the requisite number of the signatures in relation to the whole body of taxpayers, or the want of genuineness of those signatures, may be taken as an illustration. Notwithstanding such defects the act of issuing bonds may *appear* to be within the power so far as the dealer can see, and if he deals in good faith he is protected.

3. But if, when the act done and the written authority are placed side by side and compared, the act in its *very appearance* is not justified by the power, it is a void act, and no case ever held the contrary. Even this does not deny that in *private agencies* the principal can be bound by his previous recognition of similar acts outside of the power. That is nothing to the purpose, because such recognition *creates another and larger authority.* Nor was it ever held that an agent can enlarge his power by his own representation. His power is supposed to be inspected by every dealer. The agent may clothe his act with a false and deceptive appearance so as to bring it apparently within the power. But he cannot by his own representation alter the appearance of the power itself.

4. The principles here asserted have a peculiar sanction in cases of public agency where taxpayers or people in communities are to be affected. The taxpayers of a town, we repeat, are a changing and fluctuating mass. The taxpayer who assents to-day may die, or sell his estate and reside elsewhere to-morrow. There is no legal mode of previous recognition or subsequent ratification of any act not within the power,

and no one can be authorized to misrepresent or enlarge or change the power.

5. In this case there is no recital in *the so called* bonds which can affect the question. As we construe the words "in pursuance of an act," &c., they are merely words of reference to the authorizing statute so that dealers may examine it as the authority. But no matter what those words mean. If the bonds had explicitly recited that the consents of the taxpayers had been procured, following in all respects the statute, it would have been a false recital either of the statute or of the written assent of the taxpayers, and as both of these were vitally necessary to the existence of any power at all to issue bonds, such false recital could have no legal force or effect. If this proposition is not true there is no municipality which is not imminently exposed to financial ruin.

6. In connection with the preceding views it is perhaps irrelevant to repeat, that none of the bonds in question were ever in the open market, that they were acquired under the circumstances stated, by a citizen of the town and were held by him under dishonor for seventeen years, and then were sued upon by a citizen of Florida (as alleged) who had not the slightest pretense to the character of a bona fide purchaser.

FIFTH.

As to the bill of exceptions made by the plaintiff below: The only question raised is whether the recovery was properly confined to the principal, and to the interest which fell due within the six years next

before the suit was brought. When it is considered that the so called bonds are not under seal, but are simple contracts having the legal effect of mere promissory notes, it is conceived that nothing else need be said in favor of the correctness of the ruling at the trial on this point.

S. EDWIN DAY,

Atty. for Pltff. in Error.

GEORGE F. COMSTOCK,

Of Counsel

SUPREME COURT OF THE UNITED STATES. 1

THE TOWN OF SCIPIO,
Pltff. in Error.
vs.
WILLIAM P. WRIGHT,
Deft. in Error.

Brief for Deft. in Error.

A CONCISE ABSTRACT OR STATEMENT OF THE CASE AS REQUIRED BY RULE 21.

On the 16th of April, 1852, an Act was passed by the Legislature of the State of New York, entitled, "AN ACT to 2
"authorize any town in the County of Cayuga to borrow
"money for aiding in the construction of a rail-road or rail-
"roads from Lake Ontario to the New York and Erie, or
"Cayuga and Susquehanna rail-road."—Sess. Laws of N. Y., ch. 375, p. 593.

By the 1st Sec. the Assessors of the town were appointed as Commissioners to act in conjunction with the Supervisor in effecting and executing the purposes of the act: to borrow, on the faith and credit of said town, such a sum of money as they might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, &c., and to execute therefor, under their official signatures, a bond or bonds, &c. 3

All moneys borrowed was directed to be paid over to the President and Directors of such rail-road company (then organized, or such as might be organized according to the provisions of the general rail-road law, passed April 2, 1850,) as may be expressed by the written assent of two-thirds of the resident tax-payers of said town, to be expended by such President and Directors in grading, constructing and maintaining a rail-road or rail-roads passing through the City of Auburn and connecting Lake Ontario with the Susquehanna and Cayuga rail-road, or the New York and Erie rail-road, "Provided always that the said Supervisor and Commission-
"ers shall have no power to do any of the acts authorized
"by this act, until a rail-road company has been duly 4
"organized according to the requirements of the general
"rail road law, for the purpose of constructing the aforesaid
"described rail-road, and the written assent of two-thirds of
"the resident persons taxed in said town, as appearing on the
"assessment roll of such town, made next previous to the
"time such money may be borrowed, shall have been ob-
"tained by such Supervisor and Commissioners, or some one or
"more of them, and filed in the Clerk's office of Cayuga
"County, together with the affidavit of such Supervisor and
"Commissioners, or any two of them, attached to such state-
"ment, to the effect that the persons whose written assents

5 "are thereto attached and filed, as aforesaid, comprise two-
"thirds of all the resident tax-payers of said town on its
"assessment roll next previous thereto."

Sec. 2 provided that it should be lawful for the Superivsor and Commissioners of any town in said County, *on obtaining and filing such assent*, as provided in the first section, *to subscribe for and take*, in the name of and for said town, such a number of shares of the capital stock of such company as shall or may be organized for the purpose of constructing the aforesaid described rail-road or railroads, as *shall be equal to the amount of the bonds executed* under the authority of this act.

The then Supervisor and Assessors obtained the signatures
6 of three hundred and one of the resident tax-payers of the town in favor of bonding, (Fol. 279,) which, together with the required affidavit of the Assessors, were filed in the County Clerk's office, January 11th, 1853. Nothing further was attempted to be done by the Assessors. Their term of office was limited to the time of holding the next town meeting.—Sec. 10, of the act of 1852.

At that town meeting two R. R. Commissioners were elected as authorized by said Sec. 10.

The Supervisor and these newly elected R. R. Commissioners, on the 16th of May, 1853, subscribed for $25,000 of the capital stock of the R. R. Co., (Fol. 280,) and executed twenty-five bonds of one thousand dollars each, being the
7 bonds in suit. Nos. 1 to 8 are payable to Slocum Howland or bearer; all the others are payable to bearer, no payee being named therein. Fol. 281.

The R. R. Commissioners, on the 25th of May, 1853, borrowed $2,500 of Mr. Slocum Howland (Fol. 292) and paid the same on that day to the R. R. Co., being 10 per cent. upon the subscription; and scrip to the town for the $25,000 of the stock, was issued on the same day and this ten per cent. endorsed thereon. Fol. 294, 295.

On the 13th day of August, 1853, the R. R. Commissioners borrowed another $2,500 of Mr. Howland and delivered Bonds No. 4 and 5 to him, "and that made $5,000 for the five bonds," (Fol. 292) which was paid to the R. R. Co., and en-
8 dorsed on the town's scrip the same day. Fol. 295.

On the 23d of September, 1853, the Commissioners received another $2,500 of Mr. Howland and left Bonds No. 6, 7, and 8 with him, (Fol. 292,) and this money was paid to the R. R. Co. on the same day and endorsed upon the scrip, (Fol. 295.) Thus leaving the Commissioners with seventeen bonds, and due from Mr. Howland $500 balance upon bonds Nos. 6, 7 and 8.

On the 5th of January, 1854, these seventeen bonds were delivered by one of the Commissioners to the President and Treasurer of the R. R. Co., under an agreement which will be found at Fol. 293 of the bill of exceptions. Afterwards

the R. R. officers sold these seventeen bonds to Mr. Howland, 9
presumably at par, as no allegation has been made, or proof offered to the contrary. (Fol. 290.) The par value of these seventeen bonds, together with $500 besides, was endorsed on the town scrip, thus making full paid up scrip for $25,000 of the capital stock of the R. R. Co., (Fol. 294, 295, 296.) and this scrip was afterwards delivered to Mr. Tracy, one of the R.R. Commissioners, and by him delivered to the Supervisor, (Fol. 288.) The interest upon all the bonds was paid for three years, up to July 1st, 1857, to Mr. Howland, he having the bonds. (Fol. 289.)

In September, 1874, he sold and delivered all the bonds to the plaintiff.—Fol. 291, 297.

The cause was tried at the Albany Circuit, Oct. 16, 1875. 10
The Court directed a verdict for Plaintiff, which was rendered for forty thousand four hundred and two dollars.—Fol. 310.

Proceedings were stayed to enable the Defendant to move for a new trial, (Fol. 310,) which motion was made and denied, and final judgment was entered for $43,257.21, on the 28th of September, 1876.—Fol. 257 to 262.

The cause came to this Court by writ of error on the part of the Defendant, below.

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13 THE ARGUMENT.

First.—The subscription by the officers and Agents of the town for 500 shares of the Lake Ontario, Auburn, and N. Y. Rail Road Co., in the name of, and for the town, became a valid and binding contract between the town and the R. R. Co., upon the payment of the first ten per cent. thereon, irrespective of the ability of the Supervisor and rail-road Commissioners, to borrow the money necessary to pay the balance of the subscription.

14 All the pre-requisites required by the act to authorize the subscription, was proved to have been fully complied with.

1st. The passage of the act by the Legislature was proved. (Fol. 273.)

In fact it was admitted by the answer. (Fol. 241.)

The act was passed April 16th, 1852.

2d. The organization of the R. R. Co., styled The Lake Ontario, Auburn, and N. Y. R. R. Co., for the purpose of grading, constructing and maintaining a rail-road from Lake Ontario to the Cayuga and Susquehanna R. R., passing through the City of Auburn, and the towns of Scipio, Venice and Genoa, in the County of Cayuga, was also proved. The organization was perfected August 23d, 1852. (Fol. 274.)

15 3d. That the Supervisor and Assessors of the town, had procured and filed the written assents of two-thirds of the resident tax-payers of the town, was proved by the affidavit of two of the Assessors, which was annexed to, and filed with the assents. Fol. 275, 276, 277.

These papers were produced from the files of the Cayuga County Clerk's office.—Fol. 275.

That the affidavit of the Assessors was sufficient proof, was decided by this Court, under the provisions of this same statute, in the case of The Town of Venice vs Murdock, 92, U. S. 494. In that case the Defendant offered to prove that two-thirds of the resident tax-payers did not sign the Assents, but the Court held the affidavit conclusive. In this case no
16 such offer of proof was made. The number of names of those assenting was proved to be 301.—Fol 279.

In the case of Gelpcke vs City of Dubuque, (1 Wallace 221,) it was decided by this Court, that the non-existence of this fact must be proved by the defense.

The procuring the assents, and filing the same with the affidavit of the assessors thereto annexed, appears to have been all that was done by the Supervisor and assessors who were in office at the time of the passage of the act.

By the terms of the 10th Sec. of the act, it was provided that the Assessors should hold their office of Commissioners until the next annual town meeting, when two Commissioners

should be elected by ballot in the same manner as town offi- 17
cers were elected, to be called "Rail-Road Commissioners."

The term of office of the Supervisor expired at the same time. Hence, the electors of the town had the opportunity by a direct vote to approve or disapprove of the proposed bonding of the town by electing officers, for or against the project, as a majority of the electors should desire.

Accordingly, at the next annual town meeting which was held on the first day of March, 1853, William Taber was elected Supervisor, and Calvin Tracy and George Slocum were elected rail road Commissioners.—Fol. 274, 275. All of whom were in favor of bonding, as appears from their subsequent official action.

And thus the town by a vote of the majority of the elec- 18
tors voting at the annual town meeting, adopted the act, and ratified what had been done by the former Supervisor and the Assessors.

These facts having been proved, the newly elected Supervisor and R. R. Commissioners were authorized by the terms of the second Sec. of the act, "to subscribe for and take in "the name of and for said town, such a number of shares of "the Capital stock of such Company as shall or may be or- "ganized for the purpose of constructing the aforesaid de- "scribed rail-road, or rail-roads as will be equal to the amount "of the bonds *executed* under the authority of this act." They were not restricted in making the subscription to the amount of the bonds sold, nor to the amount of *the money* 19
borrowed. But to the amount of the bonds *executed*.

By the provisions of Sec. 1 of the act, the amount for which bonds were to be executed not exceeding twenty-five thousand dollars, was left to the discretion of the Supervisor and Commissioners, and in this case, they, by their subscription, and by the amount of the bonds executed, decided that that amount should be $25,000. Hence, I insist that the subscription for $25,000 of the stock of the R. R. Co., which was made on the 16th of May, 1853, was fully authorized, not only by the terms of the act, but also by the vote of the electors when they elected this Supervisor and these R. R. Commissioners, irrespective of the question whether or not these officers should be able to borrow the whole of that 20
amount.

But there was a provision contained in the general rail-road law of New York, which provided, that, "At the time of "subscribing, every subscriber shall pay to the Directors ten "per cent. on the amount subscribed by him, *in money;* and "no subscription shall be received or taken without such payment."—N. Y. Sess. Laws of 1850, Ch. 140, Sec. 4, p. 213.

In order to meet this requirement, the newly elected R. R. Commissioners borrowed of Slocum Howland, on the 25th day of May, 1853, the sum of $2,500, (Fol. 292,) and this was paid by one of the Commissioners to the R. R. Company,

21 (Fol. 296,) and was endorsed on the scrip which was issued to the town on the same day.—Fol. 295. And thus the provision of the general R. R. law requiring the ten per cent. to be paid *in money*, at the time of making the subscription was complied with—and *the contract* between the R. R. Co., and the town became complete, for, although the first ten per cent. was not paid at the date of the subscription, yet the Courts of the State had settled all questions upon that subject by repeatedly deciding that the payment of the first ten per cent. need not be simultaneous with the subscription, but when paid, the payment completes the contract, and the subscriber is bound to fulfil his part by taking the scrip and paying therefor the full subscription price, when, and as called for
22 by the Directors.

The Black River and Utica R. R. Co., vs Clarke, 25, N. Y. 208.

The Ogdensburgh, Clayton and Rome R. R. Co., vs Wolly, 40, N. Y. 118.

Dayton Receiver vs Borste, 31, N. Y. 435.

Gould vs. Town of Oneonta, 7 N. Y. 298.

And see Bank of Columbia vs Patterson's Adm'rs, 7 Cranch 307.

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SECOND. 25

The town having subscribed for and agreed *to take* five hundred shares of the capital stock of the R. R. Co., amounting to $25,000 in par value. Having paid three several calls of $2,500 each thereon, and having received the scrip for the capital atock, was liable to the R. R. Co. for the balance, ($17,500.)

The terms of the subscription were, "We, the subscribers, "severally agree *to take* the number of shares set opposite to "our names in the above named company, under the act "aforesaid, (referring to the act of April 16, 1852,) *and to be* 26 "*subject to the provisions of that act and of the laws of the State "of New York, in relation to rail-road corporations.*"—Fol. 280.

That a subscription and agreement *to take*, implies a promise *to pay*, has been long well settled by the decisions of the Courts of New York, and that is the form of subscription authorized by the act of April 16, 1852. The Supervisor and Commissioners may subscribe for *and take*, &c.—Sec. 2.

Spear vs. Crawford.—14 Wend. 20.

Buffalo and New York City R. R. Co. vs. Dudley.—14 N. Y. 336.

Lake Ontario, Auburn and N. Y. R. R. Co. vs. Mason.—16 N. Y. 452.

And see Planters' Bank vs. Sharp.—6 Howard (U. S.) 322. 27

But there is something more than that in the subscription in this case. The subscribers here not only agree *to take* the number of shares, but they also agree "to be subject to the "provisions of that act and of the laws of the State of New "York, in relation to rail-road corporations," and by the 7th Sec. of the general rail-road law, which was then in force, it is provided, that "The Directors may require the subscrib-"ers to the capital stock of the company to pay the amount "by them severally subscribed, *in such manner* and in such "installments as they may deem proper."—Sess. Laws of N. Y., 1850, Ch. 140, Sec. 7, p. 213.

That a similar subscription was valid and binding upon the town, although made by Commissioners not elected by 28 the electors of the town, was decided by the N. Y. Court of Appeals in the case of Gould vs. The Town of Oneonta.—71 N. Y. 298.

The provisions of the statute under which the subscription was made in that case, did not differ materially from the provisions of the statute in this case. By the statute in that case (N. Y. Sess. Laws of 1857, Ch. 401, p. 811, Sec. 2,) the R. R. Commissioners were authorized to borrow money on the faith and credit of the town, providing the necessary assent of the tax-payers should be obtained. By the 8d Sec. they were authorized to dispose of the bonds, and to

29 invest the *money* in the stock of the R. R. Co. And for that purpose the R. R. Commissioners, in the corporate name of the town, were authorized to subscribe for and purchase the stock of said Company, to the amount *specified in the assents.*

The assents were obtained and filed, and the subscription was made.

In giving the opinion of the Court, Earl J. says: Under chapter sixty-four, of the laws of 1856, as amended by chapter 401, of the laws of 1857, the rail-road Commissioners of the town of Oneonta were authorized to subscribe for the 700 shares of stock of The Albany and Susquehanna R. R. Co. Having the authority to subscribe, they could
30 do it in any appropriate and usual way. *Hence, the subscriptions they made in* 1858, *was authorized.* And the Court accordingly held, that the town was liable to the Plaintiff in that case for the amount of interest upon the calls made for payment upon the subscription for stock, which had been paid to the R. R. Co. by the Plaintiff's Assignor, by direction of the R. R. Commissioners of the town,—the Judges all concurring, Rapallo J. only concurring in result.

This case will be further noticed hereafter.

In considering the case now before the Court, it should be borne in mind, that other subscribers for stock in this R. R. Co., had become interested in this matter. The scrip issued to this town is numbered 455. (Fol. 294.) The other sub-
31 scribers to whom stock scrip had previously been issued, should be considered. In addition to this, had the officers of the town refused to pay or secure the payment, of the balance due upon the subscription, by the provisions of the general rail-road law, the town would have been liable to the creditors of the R. R. Co. to the extent of the balance remaining unpaid upon its subscriptions.—Sess. Laws of 1850, Ch. 140, Sec. 10, p. 214.

It is true that the R. R. Co. was authorized by the 7th Sec. of the general rail-road law, to declare the stock and all previous payments thereon, forfeited, in case of a failure to pay any installment required upon the subscription: but this provision does not prevent the R. R. Co. from compelling
32 payment of the amount subscribed. It is a cumulative remedy merely.

Buffalo and N. Y. City R. R. Co. vs. Dudley.—14 N. Y. 336.

This question was also decided by this Court in the case Seybert vs. City of Pittsburgh, (1 Wall, 272.) approving the decision made by the Supreme Court of Pennsylvania, in the case of Reinboth vs. City of Pittsburgh, (41 Pem. 278.) in which the Court says, "The power given to the corpora-
"tion to subscribe was a power to create a debt, and conse-
"quently, to give an evidence of the debt. The authority
"given was to subscribe as fully as an individual: and as

"an individual (by agreement with the Company,) could 33
"have given his bond. The city corporation had the same
"power. That grants of powers to corporations are strictly
"construed in favor of the public, but it would be a perver-
"sion of the rule to permit a corporation to use it to de-
"fraud its creditors, or protect itself against its own assumed
"obligation. If they legally owe a debt, it follows that they
"can give a bond for it."

Hence, I submit, that the town was liable to the R. R. Co. as also to the creditors thereof, for the balance due upon its subscriptions, and that such liability could have been enforced in the State Courts, under the decisions as made by the highest Courts of the State.

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37 THIRD.

The town being thus liable to pay the R. R Co., the balance remaining unpaid upon its subscription, the Directors of the R. R. Co., were authorized in the language of Sec. 7, of the general rail-road law of N. Y., (Sess. Laws of 1850, Ch. 140, p. 213), to require the town "to pay the amount * * * in *such manner*, and in such installments as they may deem proper," and under this state of facts, the delivery of the seventeen bonds, No.'s 9 to 25, both inclusive, under
38 the agreement made between the R. R. Co., and the Commissioners of the town, was just and equitable and within the powers of the R. R. Commissioners as the official representative Agents of the town.

This is no new principle. Comstock J., in giving his opinion in the Court of Appeals, in the case of Curtis and others vs Leavitt, (15, N. Y. 66), says: The right of cor- "porations in general to give a note, bond, or other engage- "ment to pay a debt is so nearly identical, or so inseparably "connected with the right to contract the debt, that no doubt "upon the question ought to be admitted. When a corpor-
39 "ation can lawfully purchase property, or procure money on "loan in the course of its business, the seller or the lender "may exact, and the purchaser or borrower must have the "power to give, any known assurance, which does not fall "within the prohibition, express or implied, of the statute. "The particular restriction must be sought for in the charter "of the corporation, or in some other statute binding upon "it; but if not found in that examination, we may safely "affirm that it has no existence. This doctrine would seem "to be clear in principle, and it is well settled in this state." citing many authorities.

When the Legislature by the passage of the act of April 16, 1852, authorized the Supervisor and R. R. Commissioners
40 of the town, "to subscribe for *and take*" the capital stock of this R. R. Co., to the *amount of the bonds executed*, it evidently was not contemplated that there should be more than one subscription, and it is equally evident, that that one subscription should be for the whole amount of the bonds, which the Supervisor and Commissioners in exercising the discretion vested in them by the first section of the act had resolved to issue in the aggregate. The Legislature was passing an act to authorize a subscription to the stock of a rail-road Comany to be organized under the provisions of the general rail-road law of N. Y., by Sec. 4 of that act. (Sess. Laws of N. Y., for 1850, Ch. 140, p. 213.) Each subscriber

was required to pay ten per cent. before the subscription 41
should become valid, and by Sec. 7 of the same act the Directors were authorized to require the subscribers to pay the amount subscribed *in such manner and in such installments* as they might deem proper.

Hence, this subscription was made by the Supervisor and R. R. Commissioners for and on behalf of the town, without reference to their ability to borrow the money to pay for the whole amount of the subscription from time to time as called for. After the subscription thus authorized was made, and after it had become final by the payment thereon, of the first ten per cent. which, and which only was required to be paid *in money*, the officers and Agents of this town, *elected for the purpose of making and fulfilling this contract with the* 42
R. R. Co., had full authority, and it was their duty to pay the balance of the subscription. They had already borrowed $7,500 upon the bonds which they had executed, all of which had been applied in payment of calls upon this subscription, and there yet remained unpaid $17,500, subject to the call of the Directors. Failing to obtain that balance by borrowing, they were authorized to satisfy the Directors by giving such paper security as they, the Directors should consent to receive, and as these town officers and agents were authorized to execute on behalf of the town.

Ketchem vs The City of Buffalo,—14, N. Y., 356.

Peterson vs The Mayor, &c., of N. Y.,—17, N. Y., 449. 43

It was stipulated by the Attorneys for the parties, that it should be admitted upon the trial, that these seventeen bonds "had been transferred by said Supervisor and Commiss-"ioners, or one or more of them, in the first instance, direct-"ly to said Rail-Road Company in exchange for stock of that "Company."—Fol. 290.

But not relying upon that stipulation, the Counsel for the Defendant below, produced upon the trial and read, the agreement which was made between the R. R. Co., and the R. R. Commissioners, when the officers of the R. R. Co., received these seventeen bonds.—Fol. 293.

These bonds as they are called, were simply commercial paper, not under seal, payable to bearer, executed by the 44
Supervisor and Commissioners under their official signatures, each for one thousand dollars—principal payable January 1st, 1873, with semi-annual interest at and after the rate of seven per cent. per annum,—Fol. 281, 282, 283, corresponding strictly with the requirement of Sec. 1 of the act.

They were not delivered to the R. R. Co. absolutely in exchange for stock, as agreed to be admitted by the stipulation. Fol. 290. The Counsel for the Defendant below, preferring to make the proof and not to rely upon the stipulation "(Counsel for Plaintiff below, not objecting,) he therefore "produced the original agreement between the R. R. Co. and

45 "the R. R. Commissioners, by which the R. R. Co. acknow-
"ledged the receipt of the seventeen bonds at par, and that
the amount had been "endorsed upon the scrip for five hun-
"dred shares as full stock, with the understanding that the
"company may, at any time within eight months from the
"eleventh day of October, 1853, re-deliver said bonds, or
"any part of them, to said town, or the rail-road Commis-
"sioners of said town, and reduce the amount of the endorse-
"ment on scrip accordingly. If said Company sell said
"bonds for more than par, they shall allow the said town for
"the amount of the premium. Said town may at any time
"within eight months aforesaid, and prior to the sale of said
"bonds by the company, have the right to demand the re-
46 "delivery of said bonds upon payment to said company of
"the par value thereof." Fol. 293. Was not this eminent-
ly just and fair? The Town, by its R. R. Commissioners,
being its Agents, elected for the purpose. To use the lan-
guage of the opinion in the case of Gould vs. Town of One-
onta. (71 N. Y. 308.) "The Commissioners were the Agents
"of the town to procure this stock, and to pay for it, and to
"settle with the company; and to adjust the amount due it
"for principle and interest on account of the stock or the
"bonds delivered to it. They were to have the stock
"by paying for it: and if there was any dispute as to
"the amount due, there were no other persons but them to
"act for the town." "The Commissioners acted within the
47 "scope of their authority conferred upon them by the stat-
"utes, and their acts must bind the town for which they act-
"ed." And this was said in reference to Commissioners not
elected by the town, but who were appointed by the County
Judge.

And see Wilson vs. Salamanca.—(99, U. S. 499.)

No wrong was intended, no injury was sufferd by any one, these bonds were left in the hands of the President and Treasurer of the R. R. Co. to be sold, and the money applied upon the subscription, they were so sold, and presumably at par, no allegation to the contrary has been made, the Town obtained its stock and the R. R. Co. obtained the full payment upon the subscription. The bonds went into
48 the hands of a bone-fide purchaser at par. To use the lan-
guage of Judge Selden in the case of Gould vs. Sterling,—
(23, N. Y. 459,) so often cited. After stating the facts in
that case as he understood then. He says: "No money
"was borrowed, and nothing else was authorized by the
"terms of the act. If, however, what was done was the
"same in effect, as if the money had been borrowed, and
"paid over to the rail-road company, the difference in form
"would not be material."

FOURTH. 49

But had the delivery of the bonds been absolute in exchange for the stock of the R. R. Co., it would have been a valid transaction and binding upon the town.

There can be no doubt upon that subject in this Court, since the decision of the case of The Town of Venice vs Murdock, (92, U. S. 494,) which was a case arising under proceedings taken under this statute, and wherein it is said, "even the rail-road company itself when it took some of the "bonds and gave its stock therefor, could have had no reason "to suppose that every condition precedent to their issue had "not been performed; and a subsequent purchaser, at any 50
"time prior to the time fixed for their final payment, must "be regarded as a *bona-fide* purchaser." This is a question in regard to which this Court will follow its own decision; and will not follow the decision of the State Courts to the contrary, made after the rights of the holder of the bonds have become fixed. Block vs. Commissioners,—99, U. S. 686. I submit however that the recent decision of the N. Y. Court of Appeals, made in the case of Gould vs. The Town of Oneonta, (71, N. Y. 298,) is directly in point, in favor of this position.

That was a case arising under the provisions of two certain statutes of the State of N. Y. The first being chapter 94 of the Laws of 1856, and the second being an amend- 51
ment of that act, Chap. 401 of the laws of 1857.

By the act of 1856, the County Judge was authorized to appoint Commissioners for the town, upon the application in writing of twelve or more free-holders, the Commissioners to hold their office for three years.

But as the question litigated arose under the provisions of the amended act, it will not be necessary further to refer to the provisions of the original act. By Sec. 1 as amended by the act of 1857, the successors of the first Commissioners were to be elected by the electors of the town. By the second Sec. as amended, it was made lawful for the Commissioners to borrow, on the faith and credit of the town, provided the necessary consent of the tax-payers should be 52
obtained, any sum not exceeding one hundred thousand dollars, and to execute bonds therefor. By the third section the Commissioners were authorized in their discretion, to dispose of said bonds or any part thereof, to such persons or corporations, and upon such terms, as they should deem most advantageous to said town, but for not less than par. And *the money raised* to be invested in the stock of the Albany and Susquehanna rail-road Company, "and for that "purpose the Commissioner or Commissioners in the corpor- "ate name of said town, may subscribe for and purchase the "stock of said Company to the amount which the tax-

53 "payers aforesaid shall consent, not exceeding one hundred "thousand dollars," and the town was declared to be entitled to the same privileges as other stock-holders—and one of the Commissioners to be entitled to appear and represent the town at any stock-holders' meeting.

Thus it will be perceived that the provisions of this amended statute were substantially the same as those of the act of April 16, 1852. Except that by this amended act the Commissioners were to subscribe for stock to the *amount named in the consents.* Whereas, by the act of April 16, 1852, the Supervisior and Commissioners were authorized to subscribe for and take stock to the *amount of the bonds executed.* In 1858, the Commissioners subscribed for $70,000 of the stock of the
54 R. R. Co., most of the bonds were delivered directly to the rail-road Co., others were sold, and the money received was paid upon the subscription.

The rail-road Company refused to deliver the stock for the $70,000 subscribed, unless the Commissioners would pay interest upon the calls, after the calls became payable. The Commissioners agreed to sell the stock at par, and received a check for $10,000 in part payment therefor, the balance to be paid upon delivery of the stock to the purchaser. Afterwards the Commissioners agreed with the R. R. Co. and the purchaser of the stock, that the purchaser should pay the interest claimed to the R. R. Co., ($6,663.52), out of the money he had agreed to pay the Commissioners for the stock.
55 This amount was paid by the purchaser to the R. R. Co., and thereupon the R. R. Co. issued a certificate for the $70,000 of stock to the Commissioners. The purchaser then to complete the purchase, received back his check for $10,000, and gave the Commissioners one of the town bonds of $500 and his check for $62,857.73, being the bal- "ance of $70,000, after deducting the interest so paid to the "R. R. Co., and said $500 town bond. But this check was not to be presented for payment or payment demanded, until the stock was transferred to the purchaser on the books of the R. R. Company, so that it could be voted upon at an election of Directors to be held in September, 1869. Before this stock was transferred to the purchaser upon the books
56 of the R. R. Co., an action was commenced by the town against the R. R. Co., and an injunction was obtained restraining the R. R. Co. from making the transfer. Thereupon, the purchaser rescinded his agreement to purchase the stock, and demanded of the Commissioners the money he had paid for interest to the R. R. Co., and the value of the $500 bond, and commenced an action against the town to recover the money thus paid. He recovered upon the trial at Circuit. This judgment was affirmed by the general term, (3, Hun. 401), an appeal was taken to the Court of Appeals, and the judgment was affirmed by that Court. The judgment of the Court of Appeals being unanimous. Rapallo J. however concurring in the result.

It appears that an act was passed by the Legislature to 57
make the bonds thus issued valid. Sess. Laws 1859, ch. 384,
p. 909, by the 2d Sec. of which the Commissioners were re-
quired "to issue the bonds authorized by said act, in pay-
"ment at par of the stock so subscribed."

The appeal in the case of Gould vs. The Town of Oneonta was argued in the Court of Appeals, Nov. 15, 1877, and decided Nov. 27, 1877. Another cause had been argued in that Court on the 22d of March, 1877, which was not decided until Jan'y 16, 1878. Horton vs. The Town of Thompson, 71 N. Y. 513.

There were two questions involved in the case of Horton vs. The Town of Thompson.

1st. Were the bonds issued directly to the R. R. Co. by 58
the Commissioners authorized by the provisions of the origi-
nal act—ch. 453 of the laws of 1868, as amended by chapter
96 of the act of 1869.

2d. If not authorized by those acts, was the act validating the issuing of the bonds by the Commissioners (chap. 809 of 1871,) constitutional?

The Court of Appeals, by a majority vote, decided both these questions in favor of the town. But no one can justly claim that this decision was intended to, or that it did, overrule the decision then so recently made by the same Court in the case of Gould vs. Town of Oneonta.

The provisions of the Statute under which the bonds in
that case were issued, differed very materially from those 59
under which the bonds of the Town of Oneonta were issued.
In the case of the Town of Thompson, the Commissioners
were authorized to "subscribe for and purchase stock of such
"company, to the amount *they may have severally borrowed*, as
"aforesaid."—Sess. Laws, 1868, ch. 553, Sec. 3.

In the case of the Town of Oneonta, the Statute authorized the Commissioners to "subscribe for and purchase the "stock of said company, to the amount *which the tax-payers* "*aforesaid shall consent*"—(N. Y. Sess. Laws, 1857, ch. 401, Sec. 3.)

The fact that the case of Horton vs. The Town of Thompson had been argued and was under advisement when the
case of Gould vs. The Town of Oneonto was argued, and re- 60
mained undecided for several months thereafter, accounts for
the language of Earl J. in giving the opinion of the Court
in regard to the constitutionality of the act of 1859, and the
reason why he laid that act out of the case.

In case of Gould vs. The Town of Oneonta, the Court of Appeals decided.

1st. That the Commissioners, after filing the necessary consents of the tax-payers, were authorized to subscribe for stock of the R. R. Co., and "having authority to subscribe, "they could do it in any appropriate and usual way. Hence, "the subscription they did make, was authorized," which

61 applies as well to the subscription made by the supervisor and Commissioners of the town of Scipio.

2d. Earl J., in delivering the opinion of the Court, says, after the passage of the act, 1859, (ch. 384 of that year,) "I have no doubt that the Commissioners, instead of selling the bonds and paying for the stock the money thus realized, could legally transfer the bonds directly to the Company in payment for the stock."

He further says, "The Commissioners issued the bonds for "the whole $70,000, and delivered most of them to the "company, in payment for the stock, and those not delivered "were negotiated and the money paid to the Company. "The point was not taken in the answer, nor upon the trial,
62 "that the bonds were not properly issued and disposed of; "and it is difficult to perceive how such point, if taken, could "avail, after the town had received and disposed of the stock "for its full par value. *Hence, if I am wrong in my con-* "*struction of the act of* 1859. *It must be assumed* here that "the bonds *were properly issued and disposed of.* In making "the stock subscription, issuing, negotiating and disposing "of the bonds, paying for the stock, selling the same and "paying the interest on the bonds, the Commissioners acted "as the Agents of the town. They were to receive the div- "idends upon the stock and apply them upon payment of "the bonds, principal and interest. They were to report "annually to the board of Supervisors, what sum of money
63 "was needed to pay principal and interest upon the bonds, "and the Supervisors were required to raise the money, and "when raised it was to be paid to the Commissioners, and "they were to pay it upon the bonds. And they were "authorized to sell the stock at par for cash, and use the "money thus realized to pay the bonds. They were the "representatives and agents of the town, within the limits "specified in the acts, in all matters pertaining to the stock "and the bonds, and no other officer had any authority in "reference to either."

Again it is said in the same opinion: "The Commission- "ers were the Agents of the town to procure this stock, and "to pay for it, and to settle with the company; and to adjust
64 "the amount due it for principal or interest on account of "the stock or bonds delivered to it. They were to have the "stock upon paying for it; and if there was any dispute as "to the amount due, there were no other persons but them "to act for the town.

"The company claimed this balance, and refused to issue "the stock until it was paid. The Commissioners, for the "purpose of getting the stock, were willing to admit and pay "the claim, and they directed Wilber to make the payment. "As to Wilber, acting in good faith, the case must be the "same as if the claim were valid, and enforcible by the com- "pany. The Commissioners acted within the scope of the

"authority conferred upon them by the statute, and their 65
"acts must bind the towns for which they acted." This lan-
guage is entirely in harmony with what is found in the opin-
ion of this Court in the case of County of Davies vs. Huide-
koper, 98 U. S. 100, wherein speaking of similar bonds, this
Court, by Justice Hunt, says: "These bonds are securities
"which pass from hand to hand with the immunity given
"by the Common law to bills of exchange and promissory
"notes. The persons who execute and deliver them—the
"Officers of the County Court in this instance—are the
"Agents of the municipal body authorizing their issue, and
"not of the persons who purchase or receive them. If these
"agents exceed their authority as to form, manner, detail, or
"circumstance, if they execute it in an irregular manner, it 66
"is the misfortune of the town or county, and not of the
"purchaser: the loss must fall on those whom they repre-
"sent, and not on those who deal with them. There must
"indeed be power, which if formally and duly executed, will
"bind the County or Town. No *bona-fides* can dispense with
"this, and no recital can excuse it."

And hence I submit, that when Rapallo J., in giving the opinion of a divided Court in the case of Horton vs. Town of Thompson, (71 N. Y., 521,) says: "The money was to "be borrowed, and the bonds issued by Commissioners to be "appointed in the manner prescribed by the act. These "Commissioners were in no sense town officers, nor did they "represent the town," (citing Sheboygan County vs. Parker, 67
3 Wall. 96,) he is mistaken. For the Commissioners in the case of Gould vs. The Town of Oneonta, were appointed in the same manner as were the Commissioners in the case of Horton vs. The Town of Thompson: and the Court of Appeals decided in that case that the Commissioners did represent the town, and that the town was bound by their acts becauae they were acting as its Agents. Nor does the opinion in the case of Sheboygan Co. vs. Parker, 3 Wall 96,) which is cited by the learned Judge in the case of Horton vs. The Town of Thompson, sanction any such principle as therein enunciated. On the contrary, Justice Grier, in giving the opinion of the Court in that case, speaking of the Commissioners, says: "They are the *lawful Agents* of the People for this 68
"special purpose, and though nominated by the Legislature,
"they cannot act without the assent of the Citizens of the
"County, ascertained in the manner directed by law; and
"having so *acted, the County cannot now repudiate their acts.*"
And in the case now before this Court the R. R. Commis-
sioners were "Town Officers" of this town: they were elected
in the same manner as other town officers, and they exercised
continuously the functions of officers of the town. Under
the rulings in the case of Gould vs. Oneonta the seventeen
bonds were legally and rightfully delivered by the R. R.
Commissioners to the R. R. Co., and the sale therof to Mr.

69 Howland transferred to him a good and valid title as the bona fide purchaser thereof at par. There has been no claim but that all parties in these transactions acted in entire good faith. It is not claimed that any wrong was intended, nor any fraud attempted; nor can it be claimed that the town did not receive all it was entitled to receive, or that it paid one farthing more than the statute authorized, or that the R. R. Co. received one farthing less.

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FIFTH. 73

The Plaintiff is entitled to recover upon the eight bonds, Nos. 1 to 8, both inclusive.

These bonds were all purchased by Mr. Howland directly from the R. R. Commissioners.

The Counsel for the town proved by the witness, Calvin Tracy, who was one of the R. R. Commissioners, that on the 25th day of May, 1853, the Commissioners received $2,500 of Mr. Howland, and delivered to him bonds Nos. 1, 2 and 3. On the 13th of August, 1853, they received from him a like sum of $2,500, and delivered to him bonds Nos. 4 and 5, "and that made $5,000 for the five bonds."— 74
Fol. 292.

Bonds Nos. 6, 7 and 8, were delivered by the Commissioners to Mr. Howland, September 23d, 1853, and they then received from him $2,500.—Fol. 292.

These several sums were paid by the Commissioner, as received, to the R. R. Co., and were severally endorsed on the scrip for stock, which had been issued to the town.—Fol. 294, 295.

It does not affirmatively appear that Mr. Howland paid the $500 balance due upon the bonds 6, 7 and 8, but it does appear that $500, in addition to the $17,000, being the par value of the seventeen bonds which were delivered to the officers of the R. R. Co., was endorsed upon the town's 75
scrip on the 7th of January, 1854. (Fol. 295.) And inasmuch as the Commissioners had no other source from which they could have obtained that $500, I submit the fair presumption is, that Mr. Howland then paid that balance. It would be difficult to guess of whom else that $500 could have been obtained. It is true the witness Tracy, who was one of the R. R. Commissioners, testified that "seven thousand five hundred dollars was all I "ever received from Slocum Howland, for bonds Nos. 1 to 8 "inclusive."—Fol. 294. But it is also true, that he testified, that he was not present when the seventeen bonds were delivered to the R. R. Co.; that he was away from home when they were delivered: that he had nothing to do with making 76
the agreement with the R. R. Co.; that that matter was left with his Co-Commissioner, Mr. Slocum, (Fol. 293.)

It also appeared that Mr. Slocum was dead, (Fol. 287,) and that the President and Treasurer of the R. R. Co. were both dead, (Fol. 296.) But inasmuch as there is no allegation upon the subject, in any of the various answers, and that no question was made upon the subject upon trial, it is unnecessary to pursue the subject.

Mr. Howland received the interest upon these bonds for three years, (Fol. 289.) Why is he not to be treated as the bona-fide owner and holder of these bonds? There is no

77 allegation in any of the answers, that when he purchased these bonds, he had any knowledge, notice, or reason to suspect, that there was any defect, either in form or substance, in regard to the assents of the tax-payers; or that the officers of the town had made any mistake in regard to the number of tax-payers assenting. In fact, there was no proof offered to be made upon the trial, tending to show that the number of taxables assenting were not in compliance with the requirements of the Statute.

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SIXTH. 81

If the Court should hold that the 17 bonds were irregularly delivered to the officers of the R. R. Company, the town was estopped from making any such defense in this action.

The act of the Legislature was adopted by the town.

By the assents given by more than two-thirds of its resident tax-payers, in the manner provided in the act.

By the election of R. R. Commissioners by the electors of the town at the first regular town meeting held after the passage of the act, and by similar election at each town meeting, for at least three years thereafter, for the witness, Calvin Tracey, testified that he acted as R. R. Commissioners in paying the interest for three years, to July 1st, 1857.—Fol. 289. 82

By the payment of interest upon all of these bonds for three years. The witness says: "The Supervisor and I paid "it. We received the money from the County Treasurer. "Mr. Howland had the bonds. We took up the Coupons. "I paid this money to Mr Howland. He then held these "bonds"—Fol. 289.

It was stipulated upon the trial, that "up to September "1870, said Slocum Howland remained the holder and owner "of said bonds."—Fol. 291.

Mr. Howland lived in Scipio, and had lived there for more than forty years before the trial of this cause.—Fol. 296.

If it be possible for a municipal town to ratify an act of its officers and Agents, it would be difficult to imagine a stronger case of ratification. At least two-thirds of its tax-payers had notice of the effort to bond the town, for that number signed assents for such bonding. 83

The electors had notice as early as the town meeting held March 1, 1853, for R. R. Commissioners were elected at that town meeting.

The tax-payers had notice, for taxes must have been levied to pay the interest for three several years at least.

The Supervisor who is the representative head of the town had notice, for he signed the bonds; he was necessarily a member of the Board of Supervisors who voted the tax rate to be paid by the town, in which this interest was included, and he was one of the officers and agents of the town who received the money from the County Treasurer and paid it to Mr Howland. 84

If a municipal town can be estopped by negligence to assert its rights or insist upon its remedies, then this town was estopped.

The assents were on file in the County Clerk's office. The Assessment roll was on file in the County Treasurer's office, and also in the office of the town Clerk.

Mr. Howland, the owner and holder of the bonds, was a resident of the town, and that he was the owner and holder

85 of the bonds, was well known to the Supervisor and R. R. Commissioners of the town, for they paid to him the interest and received of him the Coupons, and yet for more than twenty years no action was taken in the State Courts to compel him to cancel the bonds.

The town received full paid up Scrip for $25,000 of the capital stock of the R. R. Co., and presumptively have continued to hold it to the present time, for there is no allegation in the pleadings that it was ever parted with.

The town had the rights of representation to the amount of its stock at all meetings of the stock holders. And why should it not be estopped after more than twenty years, from pleading the irregularities of its assents, as was said by
86 this Court in the case of Meyer vs. The City of Muscative, (1 Wall. 392.) It does not appear that any one objected then, and no one can object now.

The issuing of the bonds was not an act. *Ultra-virez.*

The Supervisor and R. R. Commissioners had lawful authority to issue the bonds. All that is claimed, is, that they made a mistake. It is not alleged that any one intended to do any wrongful act. The mistake, if one was made, did not injure either the town or the R. R. Company; the town got its scrip and the R. R. Company got the par value thereof.

Orleans vs. Platt, (99 U. S. 676.)

Lyons vs. Munson, (99 U. S. 684.)

87 In the opinion in the case of Rogers vs. Burlingame, (3 Wall 667,) it is said, "Perfect acquiescence in the action of "the officers of the city seems to have been manifested by "the Defendants until the demand was made for the pay-"ment of the interest. They never attempted to enjoin the "proceedings, but suffered the bonds to be issued and de-"livered to the company; and when that was done it was "too late to object that the power conferred in the charter "had not been properly executed."

Supervisors vs. Galbraith, (99 U. S. 217.)

There is much more reason in this case for holding the town estopped from taking advantage of any irregularity in the issuing of the bonds, nor could any irregularity be found.

88 To allow such a defense to succeed, would be, to use the language of Judge Allen in giving the opinion of the Court of Appeals of N. Y., in the case of Moore vs. The Mayor, (73 N. Y. 250,) "That the provision, which is held to be a "shield for the protection of one class of citizens, is turned "into a sword to attack and rob a single individual citizen."

I do not believe that I can end this long argument better than by quoting the language of one of the former members of the N. Y. Court of Appeals, as used by him in his opinion in that Court, in the case of Curtis and others vs. Leavitt, (15 N. Y. 147.) He says, "The ob-"jection we are considering does not deny that the corpo-

"ration had power to create the trusts. It only insists that 89
"they were created in the corporate name and under the cor-
"porate seal by certain subordinate agents, who acted with-
"out due authority from their principal, and hence, that they
"are void. If we may apply to the question the most
"familar of all doctrines of Agency, such an objection can-
"not prevail, provided the principal at the time approved or
"afterwards ratified the act of his agent. The ratification
"need not be declared in express terms. Mere silence and
"acquiescence will, in many cases, be sufficient. So it may
"be inferred from the acts and proceedings of the princi-
"pal *in pais*, when he receives and appropriates the proceeds
"of a transaction done in his name and by his assumed
"authority, there exists the highest possible evidence of his 90
"approval. These rules are elementary, and are founded on
"the simplest ideas of justice in the dealings of men. They
"are, also, as plainly applicable to corporate as to other tran-
"saction, where the dealings are *within the power of the corpo-*
"*ration*. In such a case, no possible reason can be suggested
"why a corporate as well as a private principal is not bound
"by the dealings of its agent, which he has approved, and
"the benefits of which it has received and appropriated."

And see Dillon on Municipal Corporations, Sec. 385.

Hoyt vs. Thompson's Execr's, 19 N. Y., 207.

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93 SEVENTH.

There was no error committed by the Court in allowing or overruling evidence.

Orleans vs. Platt, 99 U. S. 676.

Town of Venice vs. Murdock, 92 U. S. 494.

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EIGHTH.

96 The Plaintiff below has Mr. Howland's title, and the judgment should be affirmed.

And inasmuch as the questions arising under this statute had been settled by this Court before the writ of error in this case was obtained, which was well known to the Counsel who tried the cause on the part of the Defendant below, for he was Counsel for the Plaintiff in Error, in the case of Genoa vs. Woodruff, (92 W. T. 502,) in which these questions were passed upon, it would seem a proper case for the allowance of damages, under the provisions of Rule 23.

D. WRIGHT,

Attorney and of Counsel for Deft. in Error.

SUPREME COURT OF THE UNITED STATES. 97

THE TOWN OF SCIPIO,
Pltff. in Error,
vs.
WILLIAM P. WRIGHT,
Deft. in Error.

Supplementary brief on behalf of Deft. in Error, in answer to the brief filed on behalf of Pltff. in Error.

FIRST.

In regard to the first point made by the Counsel for the Plaintiff in error, it is not warranted by the record.

No such question was made by the pleadings nor upon 98
the trial. But had the question been made, it could not have availed. The Plaintiff below produced the bonds, and that was *prima facia* evidence that he owned them.

Counsel for Defendant afterwards proved that the Plaintiff purchased all of them of Mr. Howland, and that he gave for them his note guaranteed by his Father, and that the bonds were delivered to the Plaintiff by Mr. Howland, but that no money had been paid. (Fol. 297.) It would seem that that was sufficient even as between Mr. Howland and the Plaintiff. What right has the town to raise such a question? Payment to the Plaintiff, or judgment recovered by him, will cancel the bonds and that is all that the town has a right to ask. A gift, accompanied by delivery would have 99
been sufficient. Cummings vs. Morris 25 N. Y. 625. Eaton vs. Alger 47 N. Y. 345.

SECOND.

The second point made by the Counsel for the Plaintiff is an exception taken at the trial because the judge *declined* "to rule and decide that the Plaintiff could not recover on "the seventeen bonds, Nos. 9 to 25, inclusive, because they "were issued directly to the railroad company in exchange "for its shares of stock," referring to the record, (Fol. 304.)

1st. Will an argument on this point be heard by the 100
Court? Because

I. The alleged error is not assigned in accordance with the provisions of rule 21, Sec's 2, 5 and 8.

II. The Court merely *declined* to decide and rule upon this, amongst many other questions, which were presented by the Counsel for the Defendant below upon the trial.

After the evidence was closed, Counsel for the Defendant below requested the Court to rule and decide upon fourteen

different propositions. (Fol. 297 to 310.) The Judge *declined* to rule upon any of them, and they were all left to be disposed of when he should charge the Jury. The Counsel could then take such exceptions to the charge as he should deem proper, and make such requests to charge as he should deem the interest of his Client required.

The Judge directed the Jury "to find a verdict for the "Plaintiff for the whole principal sum of the bonds, with "all interest accrued thereon within six years next before "the commencement of this action." (Fol. 310.) To this charge there was a *general* exception. (Fol. 310.) But there was no request whatever to vary the charge in any respect. It seems now to be conceded that a recovery upon bonds No's 1, 2 and 3 can be sustained. The Counsel cannot now assign for error a request to rule and decide upon the validity of others of these bonds, without having made a special request to the Court to charge the Jury in regard thereto. Such is the well settled practice of the Courts of New York, and the same rule has been adopted by this Court.

Walsh vs. Kelly, 40 N. Y. 556.
Hodge vs. Cooper, 43 N. Y. 216
Requa vs. City of Rochester, 45 N. Y. 129.
Beaver vs. Taylor, 93 U. S. 46.
R. R. Co. vs. Varnell, 98 U. S. 479.

2d. The question in regard to the right of the officers and agents of the town to deliver these seventeen bonds directly to the R. R Co. in exchange for stock, was presented to, argued before, and decided by, this Court, in the cases reported in 92 U. S., 494–502.

The Counsel says, "It is freely conceded that when *the* "*power* to issue the bonds came into full existence, the "abuse of such power by the town supervisor and Com- "missioners, by issuing them without consideration or for "a forbidden consideration, would not vitiate them in the "hands of a *bona-fide* holder. That proposition has never "been doubted in New York, (see Bank of Rome vs. Vil- "lage of Rome, 19 N. Y. 20,) and it is clear upon many de- "cisions of this Court involving analogous principle. But "in this case the question is whether it was a lawful issue "between the original parties."

I. *The power* to issue the bonds came into full existence when the railroad was organized and the assents were obtained and filed with the requisite affidavit. Such was the express provision of the statute. The last paragraph of the 1st Section provides that the Supervisor and Commissioners shall have no power, etc., until a railroad company shall be organized and the written assent of two-thirds of the resident tax-payers shall be obtained and filed together with

the affidavit, etc.; and the 2d Section provides that *then* it shall be lawful for the Supervisor and Commissioners to subscribe for and take the stock. That a railroad was duly organized and the assents obtained and filed, together with the required affidavit, is not now disputed. Hence it seems difficult to understand why the power was not in full existence. As I understand, this Court so decided in the cases above cited. This Court said, "The power "was given by the Legislature and it was only left "to the town to determine by the action of two-"thirds of the resident taxables whether the Super-"visor and Commissioners might act under the pow-"er." 92 U. S. 500. 105 106

II. Mr. Howland was certainly a *bona-fide* purchaser for full value when he purchased these bonds of the R. R. Co, although it is admitted that he received them with "notice that the said seventeen bonds had "been transferred to the railroad company in ex-"change for stock of said company."

In regard to this question I think the Counsel differs from the rule as expressed in the opinion as reported in the case of Venice vs. Murdock. For the facts in this case which govern this question do not differ materially from the facts in that case; the only difference consists in the fact that in that case the Counsel for the Defendant below offered to prove that a portion of the bonds were in the first instance delivered to the railroad company in exchange for stock, which being objected to, was ruled out, and exception taken. (Fol. 52–53, of the record in the case of Venice vs. Murdock.) The counsel insisting that if such proof were made, it "would change the burden of proof and compel the "Plaintiff to prove that he was a *bona-fide* holder for value "of the bonds so belonging to said Howland as aforesaid, "and that under such proof and the circumstances of the "case, the mere production of said bonds by him did not "prove that fact" (Fol. 54 of that record.) 107 108

The same offer, with the same result, was made in the case of Genoa vs. Woodruff et. al. (92 N. Y. 501.)

In this case the same proof was given without objection. The point was elaborately argued by Mr. Worden, Counsel for the Plaintiff in error in the case of Venice vs. Murdock, and also by Mr. Comstock, Counsel for Plaintiff in error in the other cases which were argued before the Court at the same time.

The point was distinctly made and elaborately argued by Mr. Worden in his brief. (See p. 20, 21 of his brief.) And also by Mr. Comstock in the brief filed by him in the case of Genoa vs. Woodruff et. al. See his 15th assignment of error and the 6th point of his argument, p. 25 and pp. 59,

109 60 of his brief in that case. And the point was necessarily decided by this Court in those cases, inasmuch as the only proof of *bona fides* of the Plaintiffs in any of those cases, was the production of the bonds with the coupons annexed, upon the trial, and that the question was distinctly passed upon and decided by the Court appears from the opinion as reported. The Court saying, "It is argued that the New "York decisions are judicial constructions of a statute of "that state. The argument would have force if the decis- "ions in fact presented a clear case of statutory construc- "tion, but they do not. They are not attempts at inter- "pretation. They would apply as well to the execution "of powers or authorities granted by private persons as they 110 "do to the issue of bonds under the statute of April 16, "1852. They assert general principles, to wit, that persons "empowered to borrow money and give bonds therefor, for "the purpose of paying to an improvement company, are "not authorized to deliver the bonds directly to the compa- "ny, a doctrine denied in this Court, in the Supreme Court "of Pennsylvania, and even in the Court of Appeals of New "York. People vs. Mead, 24 N. Y. 124. The town of "Venice vs. Woodruff et. al., 62 id. 462." And I will now add Gould vs. The Town of Oneonta, 71 N. Y. 298.

Then after adverting to cases in New York in regard to the assents, it is further said "They do not assert that the 111 "statute so declares, or that such is even its implied requisi- "tion. There is therefore before us, no such case of the con- "struction of a State statute by State courts as to yield our "own convictions of the right, and blindly follow the lead of "others eminent as we freely concede they are."

And it is further said "We have treated the case thus far, "on the assumption that the plaintiff below was a *bona fide* "holder of the bonds which he put in suit. That he was "such, abundantly appears, and nothing which was offered "at the trial tended in the slightest degree to show to the con- "trary." Yet on the trial the Defendant below offered to prove that a portion of the bonds were delivered in the first 112 instance directly to the Railroad Company in exchange for stock! It is further said by the Court "Even the Railroad "Company itself when it took some of the bonds, could have "had no reason to suppose that every condition precedent to "their issue had not been performed, and a subsequent pur- "chaser, at any time prior to the time fixed for their final "payment, must be regarded as a *bona fide* purchaser." (92 U. S. 502.)

I see no reason why what was thus said, under the circumstances of that case, should be treated as a mere dictum. It was certainly treated, both by the Court and by all the Counsel, as a question properly before the Court, as may be seen by the briefs filed by the Counsel for the respective parties.

For further argument in regard to this question see the Third and Fourth point of my general brief. 113

THIRD.

The third point made by Counsel for the Plaintiff in Error, is, that all the bonds after numbers 1, 2 and 3, were void, because they were issued after the assents which were taken, verified and filed with reference to the town assessment of 1852, had spent their force and ceased to be authority, and that the Court erred in not so ruling.

All that is said in the I. and II. Sub. of the Second point of this supplemental brief, applies equally to this point.

This same question, arising under this same statute, was made, argued before, and decided by, this Court in the case of Genoa vs. Woodruff et. al. (92 U. S. 502.) 114

As appears from the record in that case, the affidavit which was annexed to and filed with the assents, was verified September 11th, 1852, and referred to the "assessment "roll made and completed next previous to the date thereof." (See the record in that case, p. 40, Fol. 45,) and the complaint alleged that the bonds bore the certificate of the County Clerk, dated the 22d day of August, 1853, which was after the assessment roll for that year was completed (see p. 30, Fol. 22 of that record).

Mr. H. L. Comstock, the Counsel who filed a brief and argued on behalf of the Plaintiff in error in that case assigned as error, "That by the record aforesaid, it appears "that no money was borrowed, nor bonds issued, until more "than a year had elapsed after the filing of said assents; "and therefore said assents had become inoperative, they "having been made with reference to the said assessment "roll of said town for the year 1852; therefore in that there "was manifest error." (See his 26th assignment of errors, p. 28 of his brief). This Counsel argued that question at great length. (See pp. 48 to 53 of his brief.) In the opinion reported in the case of Genoa vs. Woodruff et. al., (92 U. S. 503,) it is said "Twenty-six errors have been assigned "in this case, not one of which can be sustained. All which "have the least plausibility have been considered and de- "clared unfounded in Town of Venice vs. Murdock (Supra "494) and the others might well be dismissed without spe- "cial notice." 115 116

The present Counsel for the Plaintiff in Error, says the tax payers are a changing and fluctuating mass. Their views and opinions may change, &c. Substantially the same argument was used by Mr. H. L. Comstock in his brief; and that has been exemplified in this case.

The resident tax-payers are generally voters, and it appears pretty evident that after Mr. Howland had parted

117 with $25,000 of his money, relying on the honesty and good faith of his fellow townsmen, the majority so far *fluctuated and changed*, as to elect a Supervisor and Railroad Commissioners, who would refuse to raise the money by tax to pay the interest on his bonds. But I do not believe that this Court will consent to approve of such a free and easy method of cancelling an honest debt Particularly after the question has been fully argued and solemnly decided otherwise.

FOURTH.

The Fourth point made by the Counsel for the Plaintiff
118 in Error is. "That the written assent of the tax-payers did "not conform, in substance or meaning, to the authorizing "statute in that such assents did not *express* the railroad com- "pany to which the monies to be borrowed by the town "should be paid," referring to p. 91, Fol. 277 and p. 99, Fol. 298 and 299, of the record.

All that is said by me in my 1st and 2d Sub. of the first point in this supplemental brief, applies equally to this point.

This same question was made by Mr. Comstock as Counsel for the Plaintiff in Error in Genoa vs. Woodruff et. al.
119 (92 U. S. 502) being the 25th of the errors assigned by him, (see his brief, p. 28) and the points made and argued in that brief was asked to be applied in the three other cases, including the case of Venice vs. Woodruff et. al., which were argued at the same time, (see p. 80 of his brief,) and if this point was good as to any one it was fatal in all, as the assents were in the same form in all, and the assents in this in no wise varies from them.

But another perfect answer to all that is said upon this subject, is the fact, that the recitals in the bonds exclude any such such defense, as against Mr. Howland's title to the bonds. He found the bonds in the hands of the officers of the Railroad Company for sale, the recitals showed sufficient to warrant Mr.
120 Howland to believe that the assents were sufficient and in accordance with the Statute, he was under no obligation to look farther, nor is it alleged that he did, he purchased the bonds, relying upon the good faith of the officers and agents of the town, and the town cannot be heard to say that its officers and agents made a mistake (no fraud is alleged) and that Mr. Howland must suffer by that mistake.

Again, Mr. Howland found the seventeen bonds in the hands of the officers of the Railroad Company. They all bore date May 20, 1853. It is not alleged that he had any notice in regard to the time of their delivery to the officers of the Railroad Company. The fact that they were higher in numbers than those he had purchased was no evidence

whatever, that they were subsequently issued. They all bore the same date of May 20, 1853, they were doubtless all signed on that day. 121

But the Counsel says that "in this case there are no recitals in the so-called bonds which can affect the question." The recitals are as follows: "In pursuance of an act of the "Legislature of said state entitled 'an act to authorize any "town in the County of Cayuga, to borrow money for aiding "in the construction of a railroad or railroads from Lake On- "tario to the New York and Erie, or Cayuga and Susque- "hannah railroad,' passed April 16, 1852," (Record Fol. 288.) and, "in testimony whereof the Supervisor and Commis- "sioners of the town of Scipio have, pursuant to the pro- "visions of the act aforesaid, and the written assent of two- "thirds of the resident tax-payers of said town obtained and "filed in the office of the Clerk of the County of Cayuga, "hereunto subscribed their names the 20th day of May A. "D., 1853." 122

These recitals would be sufficient before the New York Courts (that question was not made in the cases reported in 23d and 24th, N. Y.) (See Marsh vs. The town of Little Falls 1 Hun. 554) the head note of which is "Town bonds payable to "bearer, and which appear on their face to be issued in pur- "suance of the express authority of the Legislature, are not, "in the hands of a *bona fide* purchaser for value, open to any "defense in respect to their validity—St. Joseph's Township "vs. Rogers (16 Wall, 644) followed." 123

The recitals in these bonds are quite as full as were those in the case of Supervisors vs. Galbraith (99 U. S. 214.)

Moran vs. The Commissioners of Miami County, 2 Black 722.

Wilson vs. Salamanca, 99, U. S. 499.

Knox vs. Aspinwall 21, Howard 539.

Black vs. Commissioners, 99 U. S. 696.

And See—Bigelow on Estoppel, 266, 422, 423, (2d ed.)

Society of Savings vs. New London, 29 Conn. 174.

And these recitals are not only an estoppel against the town during the life of the bond, but they are equally an estoppel in favor of any purchaser of the bonds whether such purchase was made before or after the bonds became due. 124 This question of estoppel *in pais* does not depend upon any rule of commercial law, but is one of the rules of the common law and applicable to all contracts.

N. Y. & N. H. R. R. Co. vs. Schuyler 34, N. Y. 72.

St. John vs. Roberts *et. al.* 31, N. Y. 441.

Holbrook vs. N. J. Zinc Co., 57 N. Y. 616.

Foster vs. Newland 21, Wendell 173.

L'Amoreaux vs. Vischer 2 N. Y. 278.

Coleman vs. Bean 14, Abbott's Practice Rep. 38 and 3, Keyes, 94.

Continental National Bank vs. National Bank of the Commonwealth 50, N. Y. 575.